**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In Re Reexamination of: )

Patent Number: 5,845,265 )

Group Art Unit: 3993 )

Control Number: 90/006,956 )

Examiner: M. O'Neill )

Filing Date: March 8, 2004 )

For: CONSIGNMENT NODES )

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**SUPPLEMENTAL DECLARATION UNDER 37 C.F.R. § 1.132 OF ALFRED C.  
WEAVER, PH.D. SUPPORTING PATENTABILITY OF U.S. PATENT NO. 5,845,265  
AND TRAVERSING REJECTIONS IN OFFICE ACTION DATED MARCH 24, 2006**

I, Alfred C. Weaver, Ph.D., being over eighteen years of age, declare, depose and state the following:

**I. BACKGROUND**

1. I have been asked by the Patent Owner MercExchange to provide my expert opinion in support of the patentability of the claims and traversing the claim rejections set forth in the Office Action dated March 24, 2006 in the above-captioned reexamination proceeding. I am being compensated for my time at the rate of \$250 per hour.
2. I set forth my background and credentials in the June 20, 2005 Declaration submitted in response to the March 24, 2005 Office Action. I incorporate that discussion by reference herein.
3. My fields of expertise include computer science, computer systems, computer network architecture, network protocols and Internet and electronic commerce, among others. A

copy of my *curriculum vitae* was attached as Exhibit A to the June 20, 2005 Declaration.

## **II. FIELD OF THE INVENTION AND PERSON OF ORDINARY SKILL IN THE ART**

4. I set forth my opinions on the appropriate person of ordinary skill in the art from which perspective the claims in U.S. Patent No. 5,845,265 (the “265 Patent”) should be viewed in my June 20, 2005 Declaration. I hereby incorporate those opinions by reference into this Declaration.

5. I also maintain my opinion that the relevant fields of the inventions claimed in U.S. Patent No. 5,845,265 (the “265 Patent”) and, consequently, in the above-referenced reexamination proceeding, are the fields of “computerized systems and processes for presenting goods for sale via an electronic market” as well as “electronic market systems.”

## **III. UNDERSTANDING OF THE LAW TO BE APPLIED TO DETERMINE PATENTABILITY**

6. I am informed and understand that it is a basic principle of patent law that assessing the validity or patentability of a patent claim involves a two-step analysis. In the first step, the claim language must be properly construed to determine its scope and meaning. In the second step, the claim, as properly construed, must be compared to the alleged prior art to determine whether the claim is valid.

7. I am further informed and understand that in determining whether to treat a preamble of a claim as a limitation, in general, a preamble constitutes a limitation if it recites essential structure or steps or if it is necessary to give life, meaning and vitality to the claim. Additionally, dependence on a preamble phrase for antecedent basis may indicate that the preamble should be treated as a limitation because it indicates a reliance on both the preamble and claim body to define the claimed invention. Conversely, a preamble is generally not a

limitation where a structurally complete invention is defined in the body of the claim and the preamble is used only to state a purpose or intended use for the invention.

8. I am also informed and understand that a claim may be rendered obvious to one of ordinary skill in the art if the differences between the subject matter set forth in the patent claim and the prior art are such that the subject matter of the claim as a whole would have been obvious at the time the claimed invention was made. In addition, it is my understanding that obviousness is a determination of law based on various underlying determinations of fact. In particular, these underlying factual determinations include (1) the scope and content of the prior art; (2) the level of ordinary skill in the art at the time the claimed invention was made; (3) the differences between the claimed invention and the prior art; and (4) the extent of any proffered objective indicia of non-obviousness. I understand that the objective indicia which may be considered in such an analysis include commercial success of the claimed invention (including evidence of industry recognition or awards), whether the invention fills a long-felt but unsolved need in the field, the failure of others to arrive at the invention, evidence of copying, unexpected results, and initial skepticism of others in the field, among others.

9. To ascertain the scope and content of the prior art, I understand that it is necessary to first examine the field of the inventor's endeavor and the particular problem with which the inventor was involved at the time the invention was made, which I have set forth above. Moreover, a determination of obviousness cannot be based on the hindsight combination of components selectively culled from the prior art to fit the parameters of the claimed invention. Instead, it is my understanding that in order to render a claim unpatentable as being obvious from a combination of references there must be some evidence within the prior art as a whole to suggest the desirability, and thus the obviousness, of making the combination in a way that

would produce the claimed invention. In addition, it is my understanding that in order to find a claim unpatentable for obviousness, there must be a finding that each element in each limitation of the claim is disclosed or taught by the asserted combination of prior art references.

10. I further understand that the Examiner may not rely upon references that are in different fields of endeavor than fields that are analogous to the inventor's field of endeavor. In making a determination as to whether a prior art reference can be properly applied, the Examiner should consider: (1) whether the art is from the same field of endeavor, regardless of the problem addressed, and (2) if the reference is not within the field of the inventor's endeavor, whether the reference still is reasonably pertinent to the particular problem with which the inventor is involved.

11. In addition, it is my understanding that it is inappropriate for an Examiner to take official notice of facts without citing a prior art reference when the facts asserted to be well known are not capable of instant and unquestionable demonstration as being well-known. I further understand that assertions of technical facts in the areas of esoteric technology or specific knowledge of the prior art must always be supported by citation to some reference work recognized as standard in the pertinent art. M.P.E.P. § 2144.03(A).

12. I will analyze the claims of the '265 Patent and the cited prior art using these principles.

**IV. THE NAHAN PATENT, EITHER ALONE OR IN COMBINATION WITH THE CITED ART, DOES NOT TEACH OR SUGGEST ANY OF THE CLAIMS**

- A. Neither the Combination of the Nahan Patent And the Mihm Patent Nor the Nahan Patent Combined with the Mihm and Gifford Patents Render Obvious Any of Claims 26-29**

13. In the March 24, 2006 Office Action at issue, the Examiner contends that claims 26-29 are unpatentable under 35 U.S.C. § 103 as obvious over U.S. Patent No. 5,664,111 to Nahan et al. (the "Nahan Patent") in view of U.S. Patent No. 5,402,490 to Mihm, Jr. (the "Mihm Patent"). Office Action at 3. In the alternative, the Examiner contends that claims 26-29 are unpatentable under 35 U.S.C. §103 as obvious over the Nahan Patent in view of the Mihm Patent and U.S. Patent No. 6,049,785 to Gifford (the "Gifford Patent"). Office Action at 19.

14. In my opinion, the combination of the Nahan Patent and the Mihm Patent fails to disclose or suggest each and every element of independent claim 26 and, therefore, fails to render that claim obvious. In addition, in my opinion, the combination of the Nahan, Mihm and Gifford Patents similarly fails to disclose or suggest each element of claim 26.

15. As set forth in my June 20, 2005 Declaration, the inventor of the system described in the '265 Patent was addressing different issues and designed his system to achieve different objectives and results than the system described and claimed in the Nahan Patent. The '265 Patent describes and claims an electronic market system and a plurality of low-cost posting terminals used to create electronic data records of goods to be listed for sale via the electronic market. Users of the posting terminals (sellers) can post the electronic data records of goods to be listed for sale to the electronic market's database via the Internet. *See, e.g.*, '265 Patent, Col. 14, ll. 51-63; FIG. 12. Potential buyer consumers can access the electronic market via the Internet to browse and search for desired goods to purchase and can submit electronic payment information to have a payment processed by the electronic market's transaction processor. Importantly, the point of sale for the system in the '265 Patent is online at the electronic market where a potential buyer can accept a seller's binding offer to sell a good based on the terms set forth in the posted data record for the good, and the buyer's payment information is verified and

the payment processed by the system's transaction processor, thereby achieving immediate or nearly immediate finality of transaction. *See, e.g.*, '265 Patent, Col. 18, ll. 27-37.

16. The system described in the Nahan Patent, on the other hand, was designed to increase an art dealer's gallery sales by allowing member art dealers to display artwork from other member dealers' inventories to potential customers who visit the dealers' art galleries. *See, e.g.*, Nahan Patent, Col. 2, ll. 44-45; 50-59; Col. 5, l. 59-Col. 6, l. 25; Col. 7, ll. 34-36; FIG. 2. The only persons who could access the system were gallery sales staff using the specialized equipment (management unit and client sale suite) for the system installed in their galleries. Nahan Patent, Col. 3, ll. 2-9. Individual customers could not access the system via the Internet to browse, search or purchase works of art. *See, e.g.*, Nahan Patent, Col. 3, ll. 18-44. Moreover, persons in the general public could not list electronic data records of works of art they wished to sell to the Nahan system's database.

17. The distinction between the gallery sales staff's use of the Nahan system to increase in-store gallery sales and the use of the '265 Patent's system by any potential consumer is confirmed by the manner in which pricing data for a particular work of art is displayed to the gallery sales staff so that a prospective customer cannot determine the dealer's mark-up over the wholesale price for the work, as described in the following passage:

Clicking on the Price button shows the suggested retail price. A price difference ratio is calculated between the "suggested retail" and the "net" or "wholesale" price and a color is momentarily displayed surrounding the retail price 298-408 (see FIG. 22). The price difference ratio is calculated by taking the retail price minus the wholesale price paid divided by the wholesale price. This establishes the amount of discount from the suggested retail price. This discount is indicated by the color which may be selected for various discounts, such as red for 20%, blue for 30%, etc. A supplemental numeral is shown elsewhere on the screen which is used for the second discount digit, for example, a 3 added to a blue

color would indicate a 33% discount from the retail price. This approach assists the dealer in setting a price in a way that prevents a customers from determining the mark-up.

Nahan Patent, Col. 13, ll. 13-28.

18. Nor could the Nahan Patent's system process a purchase transaction. Contrary to the Examiner's contention that "Dealers are able to search the network for items that may be immediately purchased by a buyer," (March 24, 2006 Office Action at 4), the Nahan system was incapable of consummating a sales transaction immediately following a search. The Nahan system did not include an operably connected transaction processor. Transactions were required to be consummated off-line outside of the Nahan system. Purchase monies were to be transmitted from the buying dealer's bank account to the listing dealer's bank account or to an escrow account via bank wire transfer over the private banking network. Nahan Patent, Col. 13, l. 62 to Col. 14, l. 14.

19. Moreover, if a prospective customer desired to purchase another dealer's artwork displayed via the Nahan system, the artwork could not be purchased immediately by the customer. Indeed, in some cases, the customer could not purchase the listed artwork at all. To the contrary, the Nahan system required the gallery dealer to contact the dealer that had listed the work in the system to make sure that the work was still available for sale. Nahan Patent, Col. 13, ll. 47-53. In other words, works of art could be listed in the Nahan System that were not available for purchase.

20. Although the Examiner contends that I testified in the *MercExchange LLC v. eBay, Inc. and Half.com, Inc.* trial that the system described in the Nahan Patent was an "electronic market" (*see* Office Action at 82, n.12), the Examiner has misinterpreted my testimony.

21. In the portion of the *MercExchange* Trial Transcript referenced by the Examiner, I was being cross-examined by eBay's counsel concerning statements made by another Patent Office Examiner in an Office Action rendered in connection with a different MercExchange pending patent application. The testimony did not relate to the '265 Patent claims. The cited testimony relates to Defendants' Trial Exhibit 435 (a copy is attached as Exhibit 1 hereto). This exhibit is an Office Action from Application Serial No. 09/253,057. In the cited testimony, I am being asked whether the Examiner in that Office Action stated that the Nahan Patent disclosed an electronic market. I responded that the Examiner did so state. However, that does not mean that I agreed with the Examiner's position as is clear in my testimony.

Q: This is exhibit 435, and it's Bates Stamp No. 3090 of exhibit 435.

Here the examiner, the patent examiner, looking at the exact same specification that we have before us in this case, is saying that Nahan discloses, and then in that third highlighted line, electronic market. Do you see that?

A: Yes.

Q: Okay. At least the Patent Office's person of ordinary skill in the art in 1995 would understand the Nahan patent to disclose an electronic market, correct?

A: That's -- of course those are the words there. The Court has defined an electronic market for us in the context of this case, and certainly this patent examiner didn't know anything about that since this happened first.

Trial Transcript at 3402 (attached as Exhibit 2).

22. Moreover, in my opinion, the Examiner's position in connection with another pending patent application in the context of entirely different claims is not at all relevant to the claims at issue in the '265 Patent, as my testimony indicated. Moreover, I note first that the Examiner's statement in the Office Action (Ex. 1 at 12) was merely paraphrasing the language of



the patent claims at issue in the other patent application. There is absolutely no mention of the words “electronic market” in the Nahan Patent. Furthermore, I note that the claims in Application Serial No. 09/253,057 were in fact found by the Patent Office to be patentable over the Nahan Patent since that Application was issued as U.S. Patent No. 6,266,651 (Exhibit 3 hereto). And, in my opinion, the ’265 Patent claims also have numerous elements not disclosed or suggested by the Nahan Patent as I discuss below. Therefore, I maintain my opinion that the Nahan Patent does not disclose or suggest an “electronic market” as defined by the claims of the ’265 Patent.

23. The Nahan Patent’s system also lacks several major elements of claim 26. First, as the Examiner now acknowledges (Office Action at 7 and 12), the Nahan Patent fails to disclose or suggest “a posting communications handler operably connected to [a] communication interface” wherein the “communications handler receiv[es] inputs for a data record of a good for sale from [a] posting terminal apparatus, [and] detect[s] a predetermined posting terminal identification code from the posting terminal apparatus and verif[ies] from [that] code that the posting terminal apparatus is an authorized user of said electronic market” as recited in claim 26.

24. As the Examiner now concedes, the dealer’s log-on procedure described in the Nahan Patent (Col. 7, ll. 35-59 and FIG. 3) does not meet the “posting terminal identification code” recitation of claim 26. *The log-on procedure* described in the Nahan Patent *is used to identify and verify a specific dealer* rather than a posting terminal apparatus as is required by claim 26. Moreover, the cited passage from the Nahan Patent is noticeably lacking any indication that the dealer’s ID code is transmitted from the local station 6 (the alleged “posting terminal”) where the dealer is physically located to the host computer (the alleged “market”) where it might be “detected” and “verified,” as required by claim 26.

25. This is a significant and patentable distinction between the claimed inventions of the '265 Patent and the system described in the Nahan Patent as the Court of Appeals for the Federal Circuit recognized in affirming the jury's verdict that the Nahan Patent did not render the '265 Patent claims invalid. "A reasonable jury could infer that while the identification code in the '111 patent [the Nahan Patent] is directed to preventing access [to the system] by a specific [unauthorized] dealer, the identification code in the '265 patent is not dealer-specific, but serves instead to screen out terminal apparatuses that lack particular technical requirements. The evidence thus provided a sufficient basis for the jury to conclude that the '111 patent did not anticipate the asserted claims of the '265 patent." *MercExchange, L.L.C. v. eBay, Inc. et al.*, 401 F.3d 1323, 1331 (Fed. Cir. 2005).

26. Indeed, there was no need to verify that the dealers' terminals were authorized users of the Nahan Patent System since it was a closed system that was available for access by participating dealers only. The only terminals that could access the Nahan system were those in the member dealers' galleries. The equipment for each member dealer was prefabricated and provided to the dealer by the system operator. Nahan Patent, Col. 3, ll. 18-29; Col. 5, line 49- Col. 6, line 32; Col. 3, lines 18-29 and FIG. 2. Members of the general public had no ability to access the dealer network or post data records of goods for sale to the Nahan system database, nor access to the specialized system hardware installed in a dealer's gallery. Member art galleries' systems were directly connected via fiber optic cables. Nahan Patent, Col. 2, l. 67 to Col. 3, l. 2. There would be no reason for a person of ordinary skill in the art to modify the Nahan system to include the posting communications handler of claim 26. There was no need to use apparatus verification in the Nahan system.

27. Moreover, the detection of the posting terminal apparatus identification code performed by the posting communications handler of the system of claim 26 is required to occur in the process of “receiving inputs of a data record of a good for sale from the posting terminal apparatus.” *See also* '265 Patent, Col. 17, lines 18-34:

The communication protocols such as FTP and KERMIT may be enhanced by using known encryption and authentication techniques to provide an ultra-secure posting interface. The posting record may also include a header that identifies a store identification, user identification and the like to allow the market maker computer 800 to verify authenticity, approve authorization and track usage of the posting terminal 700 by a particular posting terminal 700 and posting terminal user. The market maker computer 800 may verify and accept a record and generate and send a unique bar code number for each record. The bar code number may contain a code that identifies a posting terminal 700....The unique code generated for each successfully posted record may serve as confirmation that a good has been successfully posted.

28. There is no indication in the Nahan Patent that the dealer log-on procedure occurs in the context of receipt of a data record relating to a work of art to be listed for sale. The procedure that is used to list artworks for sale in the Nahan system is illustrated in FIG. 23. FIG. 23 does not reference any identification, authorization or verification step at all.

29. The Federal Circuit agreed that there was substantial evidence to support the jury's finding that the Nahan Patent did not render the claims obvious because “with regard to the posting terminal apparatus of the '265 patent, ... one of ordinary skill in the art would not be motivated ‘to change or modify the dealer ID code in [the '111 patent system] to conform to the user ID protocols of the '265 patent's posting terminal apparatus,’ as the two are ‘dramatically different operations’ that are used for different purposes.”

30. The Mihm Patent does not cure these deficiencies in the teachings of the Nahan Patent with respect to this claim element.

31. First, the Mihm Patent is not within the field of electronic market systems nor is it in a field that is pertinent to electronic markets and the claimed inventions. Rather, the Mihm Patent is directed to the field of “[c]ommunication services, whether land-line telecommunication, cellular telecommunication, or other radio-communication services,” Col. 1, lines 17-19, and “methods for insuring that services are provided only to legitimate users of the service.” Col. 1, lines 12-15. Thus, in my opinion, the Mihm Patent is not directed to the field of the inventor’s endeavor. Moreover, the system described in the Mihm Patent is not pertinent to the problems to which the ’265 Patent’s systems are addressed, namely, the listing of goods for sale at an electronic market and the consummation of sales transactions via the electronic market’s transaction processor.

32. In my opinion, a person of ordinary skill in the art in the 1994-1995 time period would not have been motivated to combine the system described in the Mihm patent with the Nahan system in order to obtain the systems claimed in the ’265 Patent directed to electronic markets and posting terminals. A person of ordinary skill would not look to the telecommunications field to address aspects of electronic markets. And, assuming for sake of argument, that a person of ordinary skill in the art would have combined the Nahan system with the Mihm system, such a combination would not result in the systems of the ’265 Patent claims as essential claim elements would be lacking in any such hypothetical combined system.

33. Similar to the authentication procedure described in the Nahan Patent, the authentication procedure described in the Mihm Patent is used “for authenticating users of a service” (Col. 2, lines 16-18) rather than for authenticating a posting terminal apparatus as

required by claim 26. *See also* Mihm Patent, Col. 1, lines 11-15. This is true even though the authentication information in the authentication module (AM) is a concatenation of user ID information and equipment ID information. The Mihm Patent indicates that the equipment ID 82 need not be a unique identifying number which is associated with a specific user terminal 12. Because this equipment ID may be supplied by the subscriber through paper forms, the authentication center 30 does not verify that the equipment ID is accurate. Col. 7, lines 18-24. On the other hand, the user ID 76 in the Mihm Patent system is a unique number for each subscriber. Because the authentication center 30 generates the user ID for the subscriber, it does verify that this user ID is unique to a specific subscriber and is associated with a verified subscriber. Col. 7, lines 26-30. Therefore, the authentication procedure taught in the Mihm Patent could not be used to verify "from said code that the posting terminal apparatus is an authorized user" as required to satisfy the '265 Patent claims. Rather, it can only be used to verify a user is authorized.

34. Additionally, the authentication procedure described in the Mihm Patent is only used at initial log-in by a subscriber for initial access to communications services. *See* Mihm Patent, Col. 9, line 15-Col. 10, line 31 and FIG. 9 ("a task 115 forms and sends a log-on message 116 ... terminal 12 waits at a task 120 until a response is received from network 18....If the response indicates that access is granted, terminal 12 continues with its normal operating procedures....The normal operating procedures are continued until terminal 12 is de-energized or link 22 is otherwise broken.").

35. Thus, the system described in the Mihm Patent suffers from the same deficiencies as the system in the Nahan Patent, namely, that the authentication procedure is not used in connection with the process of "receiving inputs of a data record of a good, for sale from the

posting terminal apparatus” as is required by claim 26. In fact, there are no data records ever transmitted from the user’s terminal 12 to any central host computer (serving as a market maker computer) in the system described in the Mihm Patent.

36. Nor is the initial log-in authentication process described in the Mihm Patent conducted between a user’s terminal 12 and a centralized host computer. The Mihm Patent in fact teaches away from such a process. The Mihm Patent describes the use of remotely-located and distributed authentication nodes for use in the authentication procedures because “[b]y performing such authentication procedures remotely, overall network resources are conserved when compared to performing authentication procedures performed at a central location since fewer communication links within network 18 are utilized to dispose of requests for services.” Mihm Patent, Col. 5, line 67 to Col. 6, line 14.

37. Thus, even assuming for sake of argument that a person of ordinary skill in the art would modify the system in the Nahan Patent to use the authentication process of the Mihm Patent (which, in my opinion, would not be the case), such a system would nevertheless not satisfy the required “communications handler” elements of any of claims 8-29 of the ’265 Patent because such a Nahan/Mihm hypothetical communications handler would not operate in the course of “receiving a data record of a good for sale from the posting terminal apparatus” and would not be “detecting a predetermined posting terminal apparatus identification code...and verifying from said identification code that the posting terminal apparatus is an authorized user.”

38. Notwithstanding the Examiner’s contentions, I maintain my opinion that the Nahan Patent also fails to disclose or suggest “a transaction processor operably connected to said storage device” which is “adapted to receive a purchase request and electronic payment information from said participant, transfer said purchase request to said posting terminal, and

verify electronic payment information from said participant and if said electronic payment verifies then notify the owner of said good for sale by modifying a data record indexed to said data record for said good for sale to reflect said purchase request of said good for sale by said participant” as is required by claim 26.

39. The system described in the Nahan Patent cannot process transactions at all. The only means of payment disclosed or suggested by the Nahan Patent is an offline one in the form of a conventional wire transfer of funds between banks over the private banking network. Col. 13, l. 62 to Col. 14, l. 14. The buyer in the Nahan Patent’s system must go offline (outside of the Nahan system) and provide wire transfer instructions to his/her bank (either in person or via a telephone call) to effectuate payment to the listing dealer. The buyer cannot provide electronic payment information to the Nahan system because the Nahan system has no ability to receive or process such information. Nor is any payment information verified by the Nahan system. As the Federal Circuit Court of Appeals held, the electronic funds transfer process is not connected to any component of the Nahan system.

40. The Court of Appeals for the Federal Circuit agreed that the “transaction processor” described and claimed in the ’265 Patent was not disclosed or suggested by the Nahan Patent.

In the ’265 patent, a transaction processor is designed to receive payments by “entering a credit card number and expiration date or other forms of electronic payment.” ’265 patent, col. 5, ll. 6-8. *The system claimed by the ’111 patent, however, does not receive payments electronically.* Rather, the system “requests that the buying dealer wire transfer funds to pay for the purchased work.” ’111 patent, col. 14, ll. 62-64. *Instead of being able to complete a transaction on the electronic network, a buyer using the invention of the ’111 patent must temporarily leave the system to make a payment before the transaction can be completed.*

*MercExchange*, 401 F.3d at 1330 (emphasis added).

41. There is absolutely no component operably connected to the Nahan system that “receive[s] a purchase request and electronic payment information from [the proposed buyer] participant, transfer[s] said purchase request to said posting terminal, and verif[ies] electronic payment information from said participant” as is required by claim 26.

42. The “transaction processor” in claim 26 also is required to be operably connected to the “storage device” of the electronic market system. This is because after the transaction processor “receive[s] a purchase request and electronic payment information from [the proposed buyer] participant, transfer[s] said purchase request to said posting terminal, and verif[ies] electronic payment information from said participant” and “if said electronic payment information verifies,” this same transaction processor component of the electronic market system is then required by claim 26 to “notify the owner of said good for sale by *modifying a data record indexed to said data record for said good for sale to reflect said purchase request of said good for sale by said participant.*” There is simply no component in the Nahan system that performs each of these required transaction processor functions. Certainly, the banking system’s wire transfer network (the alleged transaction processor) is not connected to any database in the Nahan system and does not modify any data record in the Nahan system.

43. Additionally, because there is no “transaction processor” in the Nahan Patent system, there can be no notification module that is “operably connected to said transaction processor” or that provides notification to the posting terminal apparatus “in response to said transaction processor processing said purchase request and verifying said electronic payment information,” in accordance with claim 26.



44. The “notification” referenced at Col. 13, l. 54 of the Nahan Patent is one in which the listing dealer confirms that the desired artwork is still available for purchase, prior to a prospective purchase. It is not one that occurs after receipt and verification of a buyer’s electronic payment information. Moreover, the communication from the listing dealer to the buyer’s dealer referenced at Col. 13, ll. 56-57 of the Nahan Patent does not occur following receipt and verification of a buyer’s electronic payment information. Rather, it is merely the listing dealer’s acceptance of the buyer’s offer to purchase artwork, which occurs prior to the buyer’s purchase. Nor does the notification referenced at Col. 14, ll. 59-62 of the Nahan Patent meet the “notification” claim element. It is simply a notification to the listing dealer of a change in the buying dealer’s shipping instructions. It does not relate to the receipt and verification of the buyer’s electronic payment information. Further, the notification referenced at Col. 13, l. 64 to Col. 14, l. 1 of the Nahan Patent does not relate to the system’s receipt and verification of the buyer’s electronic information either. Rather, it is a communication of the listing dealer’s (seller’s) bank account information to the buying dealer so that the buyer may go outside of the Nahan system to effectuate the conventional wire transfer of payment to the listing dealer’s bank account.

45. Although the notification referenced at Col. 14, ll. 31-49 of the Nahan Patent is one related to the buyer’s payment for purchase of artwork, it too fails to satisfy the requirements of claim 26 since that “notification module” is not “operably connected” to a “transaction processor” as is required by claim 26, nor does it occur “in response to [a Nahan system] transaction processor[’s] processing [of a] purchase request and verifi[cation of the] electronic payment information.”

46. Nor does the system described in the Gifford Patent cure these deficiencies in the Nahan system. The Gifford Patent discloses a system having an interface to an external payment system for clearing payments (Gifford Patent, Col. 1, lines 30-35 and Col. 2, lines 35-37), which is nothing more than the inventor of the '265 Patent already acknowledged in the patent specification was available and could be used in connection with the claimed invention. '265 Patent, Col. 12, lines 36-42 ("The clear charge 404 step is used to clear the participant consignment node transaction. It is understood that this may be via an external credit card clearing network, a connection to a credit account, or through one of the many proposed electronic fund transfer schemes such as debit cards, e-money, and clearinghouses.").

47. The payment clearing procedure performed by the external payment system described in the Gifford Patent does not include the "modif[ication of] a data record indexed to said data record for said good for sale to reflect said purchase request of said good for sale by said participant" as required by claim 26.

48. Nor is the external payment system described in the Gifford Patent operably connected to a "storage device" of the merchant's system, such as database 65 or 66.

49. Thus, there is no system component disclosed or suggested in the Gifford Patent that modifies a data record of a good for sale to reflect a participant's request to purchase the good in response to and after the participant's electronic payment is verified, as required by claim 26.

50. Because the goods sold by the merchants in the Gifford system are not unique and multiple copies of the same digital content sold can be reproduced and sold by the merchant (Gifford Patent, Col. 5, ll. 10-51), there is no need in the Gifford system to track ownership of specific copies of the digital content and no need to modify data records of the goods to reflect

transactions. In contrast to the electronic market system of the '265 Patent claims, the buyer of the digital content from the merchant in the system described in the Gifford Patent cannot re-sell the purchased digital content via the merchant's system. Again, because of this, there is no need for the Gifford system to "modify[] a data record indexed to said data record for said good for sale to reflect said purchase request of said good for sale by said participant" as claimed by claim 26.

51. Thus, even assuming for sake of argument that a person of ordinary skill in the art were to modify the Nahan system to incorporate the interface to the external payment system described in the Gifford Patent (which I do not believe would be the case for the reasons set forth below), such a combination still fails to meet the requirements of the "transaction processor" of claim 26.

52. In my opinion, a person of ordinary skill in the art would not have been motivated to combine the system described in the Nahan Patent with any external payment clearing system, such as that described in the Gifford Patent, or as described in the specification of the '265 Patent, because the objective of the Nahan Patent is to "provide[] an art dealer the opportunity to increase his profitability by increasing his overall sale of artwork" while also "allow[ing] the dealer to provide more personalized service to his customers." Nahan Patent, Col. 4, ll. 11-17. The Nahan Patent teaches that the dealers are personally involved in negotiating sales of artwork with the customers. Hence, the Nahan system includes the pricing feature designed "to assist the [buying] dealer in setting a price" for the artwork by providing the buying dealer with "suggested retail," "net" and "wholesale" prices. Nahan Patent, Col. 13, ll. 13-28. The Nahan system is designed so that both the listing dealer and the buying dealer receive some proceeds from a sales transaction. Those "personal service" and "increased dealer sales" objectives of the Nahan

Patent would not be achieved in a system that would enable a customer to bypass the buying dealer and present payment information directly to a system that would process the payment and immediately consummate the sale, such as the one in the '265 Patent claims. Thus, a person of ordinary skill in the art would not have been motivated to combine the Gifford system with the Nahan system because the Nahan Patent teaches away from making such a combination.

53. Moreover, the system in the Nahan Patent always provided a listing dealer with the ability to reject a prospective buyer's proposed purchase by overriding reservations and sales to other dealers. Nahan Patent, Col. 15, lines 44-49. Similarly, a buying dealer could reject purchase of a work for any reason even after its delivery from the listing dealer. This is a contingent sale or a "sale on approval." Because either the listing dealer or the buying dealer can reject a proposed purchase, the Nahan system required the use of an escrow account at a bank that could hold the purchase monies for a specified period of time rather than clearing the payment and transfer the purchase funds immediately to the seller's bank account. The escrowed funds might need to be returned to the prospective buyer if either the buyer rejected the artwork after it was shipped, or the listing dealer decided not to sell the work, or decided to sell it to someone else. *See, e.g.*, Nahan Patent, FIG. 37 at 710 ("Return funds"); Nahan Patent, FIG. 35 at 596 ("Artwork Receipt Override Time still remains to reject artwork"); Nahan Patent, FIG. 34 wherein at 11A a Listing Dealer "receives returned artwork" and the Host Escrow Bank is "advised to wire transfer [the] gross purchase price [back] to" the Buying Dealer; Nahan Patent, FIG 30 wherein Listing Dealer does not ship artwork and the host escrow bank is advised to wire transfer the gross purchase price to the buying dealer. Therefore, the Nahan Patent expressly teaches away from a system having an operably connected transaction processor that can process payment and transfer an item to a buyer "with an immediate or nearly immediate finality of

transaction” as taught by and claimed in the ’265 Patent. Thus, a person of ordinary skill in the art would not be motivated to combine the Nahan system with the Gifford payment system.

54. Thus, because the Nahan Patent, either alone or in combination with the Mihm Patent and/or the Gifford Patent, fails to disclose or suggest the “posting communications handler,” the “transaction processor” and the “notification module” of claim 26, the cited art fails to render obvious claim 26.

55. Because the cited art fails to disclose or suggest each and every element of independent claim 26, it similarly fails to disclose or suggest each and every element of claims 27-29 which depend from claim 26.

**B. The Nahan Patent Does Not Render Claims 1-7 Obvious**

56. In the March 24, 2006 Office Action, the Examiner also contends that claims 1-7 of the ’265 Patent are unpatentable under 35 U.S.C. § 103 as being obvious over the Nahan Patent. *See* Office Action at 61-76.

57. I disagree with the Examiner’s contention. In my opinion, the Nahan Patent fails to disclose or suggest each and every element of independent claim 1, or claims 2-7 which depend from claim 1.

58. As discussed above, the system described in the Nahan Patent does not include a “payment clearing means for processing a purchase request” from a purchaser, or a “payment means for transferring funds to a user of said system” as required by claim 1. Rather, as set forth above, and as acknowledged by the Court of Appeals for the Federal Circuit, payments are made via a bank wire transfer conducted between banking institutions and outside of the Nahan system.

59. The Examiner's references in the specification of the Nahan Patent are to conventional wire transfers between banks, not to any component that is connected to a dealer's system. Nor are either of the listing dealer's or buying dealer's bank accounts connected to the system. Thus, the Nahan system does not include any component or means for transferring funds to a user of the system, as required by claim 1. In contrast, the electronic market system described in the '265 Patent includes "an accounts 824 database to track payments due to posting terminal users." '265 Patent, Col. 19, lines 16-18 and FIG. 12. *See also* Col. 19, lines 45-16 ("It is understood that participant accounts may be tracked at the market maker computer 800.")

60. The Examiner concedes that the Nahan Patent fails to teach that the system includes a "bar code scanner" and a "bar code printer," as recited in claim 1. "Nahan does not explicitly discuss the use of a bar code scanner." Office Action at 66. "Nahan does not explicitly discuss the use of bar code printers." Office Action at 67. The Examiner contends, however, that it would have been obvious to one of ordinary skill in the art to modify the Nahan system to include a bar code scanner and bar code printer because the Nahan Patent describes the use of International Standard Artwork Numbers (ISANs) to identify individual works of art (Col. 11, ll. 16-36), and the generation of art reports (Col. 11, ll. 60-67). I disagree.

61. I continue to maintain my opinion that a person of ordinary skill in the art would not have been motivated to modify the Nahan Patent's system to include a bar code scanner and printer at the listing dealer's posting terminal apparatus, as recited in claim 1. The use of ISANs described in the Nahan Patent is not the same as the unique bar code generated by the market system for use with the bar code scanner and bar code printer as taught by and claimed in the '265 Patent. An ISAN is not a unique number for each physical copy of a work that is assigned by the market system to serve as confirmation that a good has been successfully listed for sale on

the market, as taught in the '265 Patent. '265 Patent, Col. 17, ll. 27-34. Rather, the ISAN is generated by a third party, and not by the Nahan system. Moreover, the same ISAN is used to identify a work regardless of the various formats in which the work is distributed (e.g., original oil painting versus reproduction). So, for example a work of art described as "Monet's Water Lilies" will have the same ISAN regardless of whether it refers to the original painting, a reproduction or a poster. In contrast, the system described and claimed in the '265 Patent uses bar code numbers to *uniquely* identify a specific record for a specific, unique good posted to the market maker computer's database. "The market maker computer 800 may verify and accept a record and generate and send a *unique bar code number for each record*. The bar code number may contain a code that identifies a posting terminal 700. The posting terminal accepts the bar code and places the code in the appropriate record. The *unique code* generated for each successfully posted record may serve as confirmation that a good has been successfully posted." '265 Patent, Col. 17, lines 27-34. "It is understood that through the procedures of generating a unique code for each posted good, checking a unique code that identifies each posting terminal 700 against the legal owner entry in a posted good on the market maker computer 800 the database of for-sale goods 814 will be extremely reliable and accurate to assure that locally sold goods that have already been sold on the market maker computer 800 will not be inadvertently sold twice." '265 Patent, Col. 18, lines 19-27. The ISAN numbers used in the Nahan Patent's system cannot fulfill the functions of the bar code numbers in claim 1, nor would a person of ordinary skill in the art consider them to be useful for the same purpose.

62. Moreover, as the Examiner concedes, there is no teaching or suggestion in the Nahan Patent of the posting terminal apparatus' receipt of a unique tracking number generated by the "market for goods" after the transfer of a data record for a work of art by the "posting

terminal” to the market for goods. Nor does the Nahan Patent describe a system in which the posting terminal apparatus stores a tracking number received from the market for goods in a data record for the work of art and then, from that received tracking number, generates a bar code printout on a bar code printer, as required by claim 1.

63. The “modification acknowledgement” referenced by the Examiner (Office Action at 72) is not the same as the claimed “tracking number” received by the posting terminal from the market for goods as required by claim 1. First, it is not a tracking number. Second, it is not received by the listing dealer in response to his initial listing of an artwork. Rather, it is received only following receipt of a modified listing.

64. Because there is no bar code number or any tracking number that is received by the listing dealer’s system, nor is there any bar code printer, it follows that the Nahan Patent also fails to disclose or suggest a posting terminal system that “print[s] a bar code number from said tracking number on said bar code printer” as required by claim 1.

65. Because the Nahan Patent fails to disclose or suggest each and every element of claim 1, for the same reasons, the Nahan Patent also fails to disclose or suggest each and every element of claims 2-7 which depend from claim 1.

66. In addition, claim 2 requires that the transfer of the data record from the local posting terminal computer to the market for goods “convey[s] a binding offer for sale of said good at said [sale] price from said computer to said market.” Contrary to the Examiner’s contentions, the system described in the Nahan Patent fails to meet this claim element, and expressly teaches away from a dealer’s listing of a work of art constituting a binding offer for sale.



67. First, the Nahan Patent expressly teaches that the price set forth in the data record for a work of art is a “suggested retail price” only rather than a binding sales price. Nahan Patent, Col. 13, ll. 26-28. This “suggested retail price” is displayed to “assist[] the dealer in setting the price [to the customer] in a way that prevents a customer from determining the dealer’s markup.” Nahan Patent, Col. 13, ll. 26-28.

68. Nor does presentation of a retail price from a buying dealer to the client constitute a legally binding offer for sale, contrary to the Examiner’s suggestion. *See* Office Action at 73. The buying dealer is not the legal owner of the listed artwork and therefore cannot convey a legally binding offer for sale to the client.

69. Moreover, the Nahan Patent expressly teaches that the listing of a work of art in the system’s database does not constitute a “binding offer” to sell the work. The listing dealer can withdraw the offer to sell the work of art at any time, even after receipt of an offer from another dealer for the purchase of the listed work. *See, e.g.*, Nahan Patent, Col. 13, ll. 47-51 (“when a dealer places a buy order on behalf of a client 500 and acknowledges it, . . . [t]he listing dealer is then requested to electronically confirm that the work sold is still available 504.”); Col. 14, ll. 15-30 (“If the listing dealer rejects the order of the buying dealer 542 or does not respond to a confirmation of availability request 544-548, the system cancels the transaction 550. When the listing dealer formally rejects the order 552-554, . . . , the system sends an electronic notice to the buying dealer informing him that the requested work is not available 558.”)

70. The listing dealer can even withdraw a listed work of art from sale *after* a buying dealer has wired the purchase funds to the escrow account. Nahan Patent, Col. 15, ll. 6-17. *See also* FIG. 47, which deals with situation wherein “artwork has been previously sold but not yet shipped; [listing dealer] decide[s] to ignore original sale and take artwork.” It is thus clear that a

dealer's listing of a work of art via the Nahan system never constitutes a binding offer for the sale of that work.

71. Nor would a person of ordinary skill in the art be motivated to modify the Nahan system to provide the system of claim 2 because the Nahan Patent teaches away from a listing of a work of art in the system constituting a "binding offer for sale" of the listed work of art. Instead, the Nahan Patent teaches that it is a distinct advantage to the listing dealer in having the ability to withdraw a work of art from the system at any time. Nahan Patent, Col. 15, l. 44 to Col. 16, l. 7 ("Since there are generally significant advantages to a listing dealer when he can sell artwork from his own inventory to a customer in his gallery (e.g., higher profit margin, no time delays, no shipping, etc.), the system provides the listing dealer with the ability to override reservations and sales to other dealers.") This is entirely consistent with the objective of the Nahan Patent to increase an art dealer's "profitability by increasing his overall sale of artwork." The Nahan Patent recognizes that it is more profitable for an art dealer to sell a work from his own inventory to a customer in his gallery. As a result, such sales are given preference over sales to remote dealers.

72. With respect to claim 3, because there is no "bar code," "bar code scanner" or "tracking number" disclosed or suggested in the Nahan Patent, it follows that there is no teaching or suggestion of a posting terminal computer that is "adapted to receive said bar code from said bar code scanner" or one that "transmit[s] said tracking number to said market for goods." And, because there is no "tracking number," there can be no posting terminal computer that "retrieve[s] said data record identified by said tracking number" as required by claim 3. Moreover, because the data record does not "convey[] a binding offer for sale of said good" on the part of the listing dealer to the purported "market," there can be no "withdrawal of [any]

binding offer for sale” of a good either. Thus, the Nahan Patent does not meet the elements of claim 3 for these additional reasons.

73. With respect to claim 6, the Examiner acknowledges that the Nahan Patent does not disclose the use of a “modem” as the means for communications between the listing dealer’s system and the host system. *See* Office Action at 75. Rather, the Examiner contends that a modem could have been used for communications across the public switched telephone network.

74. However, the Nahan Patent does not describe the use of the public switched telephone network. Instead, the Nahan Patent describes a closed circuit, private network using fiber optic cables for “virtually instantaneous transmission.” Col. 2, line 64 to Col. 3, line 2. Since the system was required to be able to exhibit high-resolution, high-quality images of works of art, a person of ordinary skill in the art would not make use of modems accessing a public switched telephone network in order to access images of the artwork as such a slow transmission medium would be inefficient and ineffective for displaying the works requiring high resolution images.

75. With respect to claim 7, the Examiner concedes that the Nahan Patent does not disclose or suggest communication between the posting terminal and the market for goods “via the Internet” as recited in claim 7. The Examiner asserts, however, that the description in the Nahan Patent of fiber optic cables and a wide area network teaches the use of the Internet for the computers in the system to communicate across. Office Action at 76. I disagree with the Examiner’s contention.

76. Because the Nahan Patent describes that communications among the member dealers would occur over fiber optic cables (Col. 2, l. 67 to Col. 3, l. 2), such discussion indicates

that the member dealers maintain direct connections to the Nahan system rather than the indirect, packetized connections that are used for communications via the Internet.

77. Furthermore, in my opinion, a person of ordinary skill in the art would not have been motivated to modify the Nahan system to provide for communication via the Internet. It was not until May, 1995 that the National Science Foundation opened the Internet for supporting commercial activities and transactions. Moreover, there was no need for Internet communication in the Nahan system. The use of the Nahan system was limited to the member art dealers only. It was not intended to be accessed by the general consumer public. Prospective art buyers were required to visit the gallery of a member dealer to view the listed artwork. Nahan Patent, Col. 3, ll. 30-43. Nor could members of the general public post data records for works of art they wished to sell to the Nahan system's database. Members of the general public could not be sellers; they could only be buyers. Consequently, there was no reason to use a widely-distributed network such as the Internet in the Nahan system.

**C. The Combination of the Nahan, Mihm and Gifford Patents Does Not Render Claims 8-14 Obvious**

78. The Examiner has rejected claims 8-14 under 35 U.S.C. § 103 as being obvious over the Nahan Patent in view of the Mihm Patent. *See* Office Action at 26. Alternatively, the Examiner has rejected these claims as obvious based upon the combination of the Nahan, Mihm and Gifford Patents. Office Action at 31. I disagree that either of these combinations renders claims 8-14 obvious.

79. With respect to claim 8, the Examiner contends that the use of the ISANs as described in the Nahan Patent satisfies the required "tracking number" of the claim and that it would be obvious to have a "tracking number printer means" or the "tracking number scanner means" for use in connection with the ISANs. However, as set forth above, the ISAN cannot be

used as the recited “tracking number.” ISANs are not unique numbers. Rather, the same ISAN is used for “Monet’s Water Lilies” regardless of whether it refers to the original work, a reproduction or a poster.

80. As set forth above, the Nahan Patent also fails to disclose or suggest the “post/de-post communications handler [that] ... detect[s] a predetermined posting terminal apparatus identification code,” the “transaction processor ... adapted to receive a purchase request and payment means ..., clear said purchase request and payment means and ... transfer the ownership of said good for sale by modifying said data record of said good for sale to reflect the new ownership” or the “notification means operably connected to said transaction processor,” for all of the reasons set forth above. And, for the same reasons as discussed above, the Mihm Patent does not describe the claimed “post/de-post communications handler” and the Gifford Patent does not disclose or suggest the claimed “transaction processor.” Thus, the combination of the Nahan, Mihm and Gifford Patents fails to disclose or suggest each and every element of claim 8.

81. Because the combination of the Nahan, Mihm and Gifford Patents fails to disclose or suggest each and every element of claim 8, the combination also fails to disclose or suggest each and every element of claims 9-14, which depend from claim 8.

82. Additionally, with respect to claim 9, because neither the Nahan Patent nor the Mihm Patent discloses or suggests a “post/de-post communications handler,” as set forth above, it follows that the combination also fails to disclose or suggest “a security handler operatively connected between said post/de-post handler and said data storage device [that] provid[es] means for authorizing, authenticating and securing said communications between said post/de-post handler and said data storage device” as recited in claim 9.

83. With respect to claim 11, as set forth above, the Nahan Patent fails to disclose or suggest that the communications medium via which the art dealers' computers communicate with the host is the Internet or World Wide Web. Therefore, it follows that the Nahan Patent also fails to disclose or suggest use of a "world wide web server" as recited in claim 11. And, as set forth above, in my opinion, a person of ordinary skill in the art would not have been motivated to modify the Nahan system for use over the Internet or the World Wide Web since the Internet was not available for private commercial use at the time and since there was no need to use the Internet or World Wide Web because the Nahan system was a closed-circuit system designed to be accessible only by the member art dealers using the specified system hardware in static, predetermined locations (*i.e.*, the member art dealers' galleries) and not by the general public.

84. Neither the Nahan Patent nor the Gifford Patent includes "an accounts database operably connected to [the] transaction processor" as required by claim 12. The Examiner's citation to Col. 13, l. 63 to Col. 14, l. 5 of the Nahan Patent is inapposite. The referenced escrow account is maintained at a bank, not with the Nahan system. The Nahan Patent does not disclose or suggest inclusion of an accounts database in the Nahan system.

85. As set forth above, because the Nahan Patent and the Mihm Patent each fail to disclose or suggest the "post/de-post communications handler" of claim 8, it follows that these Patents also fail to disclose or suggest a post/de-post handler that "generates a unique tracking number and sends said unique tracking number to the posting terminal apparatus in response to said post/de-post handler receiving said data record of said good for sale from the posting terminal apparatus" as recited in claim 13. Moreover, as set forth above, the ISANs used in the Nahan system are not unique to a particular copy of a work of art nor are they sent by the

communications handler to the listing dealer's system. The user of a terminal 12 in the Mihm Patent cannot transmit a data record to a host computer and, thus, it follows that the host computer does not transmit a tracking number back to a terminal 12 in response to any transmission by the terminal 12.

86. For the same reasons as set forth above with respect to claim 2, the Nahan Patent fails to disclose or suggest a system wherein the transmission of a data record relating to a work of art to be listed via the Nahan system conveys a "legally binding offer for sale" of the art work as required by claim 14. In fact, the Nahan Patent teaches away from such a system. The Nahan Patent encourages a dealer to cancel previously consummated sales to customers of other galleries if the dealer can sell the artwork through his own gallery. *See* Nahan Patent, Col. 15, l. 44 to Col. 16, l. 7.

**D. The Combination of the Nahan, Mihm and Gifford Patents Likewise Does Not Render Claims 15-22 Obvious**

87. The Examiner has rejected claims 15-22 as unpatentable under 35 U.S.C. § 103 based on the Nahan Patent in view of the Mihm Patent. Office Action at 38. Alternatively, the Examiner has rejected these claims as obvious based on the combination of the Nahan, Mihm and Gifford Patents. Office Action at 44. I disagree with the Examiner's contentions.

88. With respect to claim 15, as set forth above with respect to claims 8-14, the Nahan Patent fails to disclose or suggest the required "tracking code printer," "tracking code scanner," "post/de-post communications handler...[for] detecting a predetermined posting terminal apparatus identification code from the posting terminal apparatus and verifying from said identification code that the posting terminal apparatus is an authorized user of said market apparatus," "a storage device operably connected to said post/de-post handler," "a transaction

processor,” or a “notification means operably connected to said transaction processor” as recited in claim 15. Nor do the systems described in either the Mihm or Gifford Patents cure these deficiencies.

89. Since the combination of the Nahan, Mihm and Gifford Patents fails to disclose or suggest each and every element of claim 15, it follows that this combination also fails to disclose or suggest each and every element of claims 16-22, which depend from claim 15.

90. Moreover, for the same reasons as set forth above with respect to claim 9, neither the Nahan Patent nor the Mihm Patent discloses or suggests a “security handler operatively connected between said post/de-post communications handler and said storage device” as required by claim 16.

91. For the same reasons as set forth above with respect to claim 11, the Nahan Patent fails to disclose or suggest the “world wide web server” as required by claim 18, nor would a person of ordinary skill in the art have been motivated to modify the Nahan system to include the world wide web server of claim 18. Similarly, the Mihm Patent does not disclose or suggest this claim element.

92. For the same reasons as set forth above with respect to claim 12, neither the Nahan Patent nor the Gifford Patent discloses or suggests “an accounts database operably connected to said transaction processor,” as recited in claim 19. Thus, this combination does not render claim 19 obvious.

93. Because neither the Nahan Patent nor the Mihm Patent discloses or suggests a “post/de-post communications handler,” this combination similarly fails to disclose or suggest the system of claim 20 which requires such an element.



94. For the same reasons as set forth above with respect to claims 2 and 14, the Nahan Patent fails to disclose or suggest a system wherein the market's receipt of the "data record of said good for sale [confers] a legally binding offer for sale of said good" as is required by claim 21. In fact, as discussed above, the Nahan Patent teaches away from such a system. Moreover, neither the Mihm Patent nor the Gifford Patent discloses or suggests a system wherein a user may transmit a data record of a good for sale to a market maker computer. Thus, these patents do not cure the deficiencies in the Nahan Patent's system.

**E. The Nahan Patent Does Not Disclose or Suggest the Elements of Claims 23-25**

95. The Examiner has also rejected claims 23-25 under 35 U.S.C. § 103 as obvious over the Nahan Patent. Office Action at 51. I disagree.

96. With regard to claim 23, as discussed above, the Nahan Patent fails to disclose or suggest a system having "access to a transaction processor for processing a purchase request from [a] purchaser," "access to a payment means for transferring funds to a user of [the] system [for] presenting a data record of a good for sale to a market for goods," "a digital camera," or a "computer... adapted to ... receive a tracking code for said good for sale to a market for goods," all as required by claim 23. Thus, because the Nahan Patent fails to disclose or suggest numerous elements required by claim 23, it fails to anticipate claim 23 or render it obvious.

97. Because the Nahan Patent fails to disclose or suggest each and every element of claim 23, it also fails to disclose or suggest each and every element of claims 24 and 25, which depend from claim 23.

98. Moreover, with respect to claim 24, for the same reasons as set forth above with respect to claims 2, 14 and 21, the Nahan Patent teaches away from a system wherein the transfer

of a data record of a good for sale from the posting terminal apparatus to the market conveys a binding offer for the sale of the good. Thus, the Nahan Patent fails to anticipate claim 24 or render it obvious.

99. With respect to claim 25, as set forth above, the Nahan Patent fails to disclose or suggest the use of a "bar code" or a "bar code scanner" and, thus, fails to satisfy the elements of claim 25 for these additional reasons.

## **V. CONCLUSION**

100. In summary, for all of the foregoing reasons, it is my opinion that the Nahan Patent, either alone or in combination with the Mihm Patent and/or the Gifford Patent, does not render obvious any of the claims of the '265 Patent.

The undersigned declares further that all statements made herein of his own knowledge are true and all statements made on information and belief are believed to be true and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Date: June 23, 2006

By: Alfred C. Weaver  
Alfred C. Weaver, Ph.D.



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

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2165

DATE MAILED:

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Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

BURNS DOANE SWECKER & MATHIS, L.L.  
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Final Rejection Resp

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BD0003078

# Office Action Summary

Application No.  
09/253,057

Applicant(s)

WOOLSTON

Examiner

Forest Thompson Jr.

Group Art Unit

2165

☒ Responsive to communication(s) filed on 8/28/00

☒ This action is FINAL.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 35 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire THREE month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claim

☒ Claim(s) 46-95 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☒ Claim(s) 80-89 and 91-95 is/are allowed.

☒ Claim(s) 46-79 and 90 is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☐ Claims \_\_\_\_\_ are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some ☒ None of the CERTIFIED copies of the priority documents have been

☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☒ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s): \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

BD0003079

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

Art Unit: 2165

**DETAILED ACTION**

1. This action is responsive to the amendment filed 28 August 2000 (see Paper #12) which deleted claims 11-45 and added new claims 46-95. **Claims 46-95 are pending in this application.**
2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action (see Paper #10), or will be included here for clarity, as necessary. The text of those sections of Title 35, U.S. Code not otherwise provided in a prior Office action will be included in this action where appropriate.
3. Claims 46-95 have been examined.
4. On Paper #12, all pages except pg. 1 indicate that this amendment applies to application #09/255,057. Examiner assumes that applicant inserted the wrong number since the content follows application #09/253,057. Correction is required on future correspondence. If this is incorrect, then applicant should notify the examiner accordingly.

***Claim Rejections - 35 USC § 103***

5. Official Notice is taken that claims 46-79 and 90 claim a different invention than that claimed in claims 80-89 and 91-95, there being no allowable generic or linking claim. Claims

**BD0003080**

Art Unit: 2165

46-79 and 90 claim a computer-implemented two-tiered electronic market system for used and collectible goods (invention #1). Claims 80-89 and 91-95 claim an electronic auction system that facilitates electronic commerce (invention #2). Because these inventions are distinct and have acquired a separate status in the art because of their recognized divergent subject matter (as illustrated by their different classification), restriction for examination purposes as indicated is proper. Additionally, because these inventions are distinct for the reasons given above in this section and the search required for Group 705/27 is not required for Group 705/37; restriction for examination purposes as indicated is proper.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

6. Claims 46-79 and 90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Nahan et al. (U.S. Patent No. 5,664,111).

7. As per claims 46-47 and 56, Nahan discloses:

- a data repository (col. 2 lines 60-64);
- a first-tier electronic market (col. 2 lines 50-57; col. 7 lines 35-45)
- the inventory being offered to the first participant under a first pricing scheme (col. 13 lines 13-28); and

BD0003081

Art Unit: 2165

- the first-tier electronic market comprises a business-to-consumer electronic market (col. 2 lines 52-59); and

- a second-tier electronic market (col. 2 line 50-57).

Nahan does not specifically disclose the inventory being offered to the second participant under a second pricing scheme different from the first pricing scheme, the second-tier electronic market comprises a business-to-business electronic market, nor the dealer comprises a wholesaler. However, Official Notice is taken that it was old and well known in the art at the time the invention was made that the inventory is offered to the second participant (i.e., business-to-business) under a second pricing scheme different from that offered to the first participant under the first pricing scheme. An obvious example of this are automobile dealerships. When a dealer (the second participant) wants a vehicle that he does not currently have in stock, he has the option of searching other affiliated dealerships for the desired vehicle, and consummating a deal to transfer the desired vehicle to his dealership at appropriate dealer's (i.e., manufacturer's) costs, which constitutes a "wholesale" price in the eyes of a buyer (e.g., first participants). This dealer then has the option of selling this vehicle at manufacturer's retail price to the first participant. A first participant in the first tier in this case would be a consumer buying from the affiliated dealership an automobile at the retail price. Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine old and well known art with Nahan to disclose the inventory being offered to the first participant under a first pricing scheme (the first-tier electronic market comprising a business-to-consumer electronic market) and the inventory

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Art Unit: 2165

being offered to the second participant under a second pricing scheme different from the first pricing scheme (the second-tier electronic market comprises a business-to-business electronic market and the dealer comprises a wholesaler), because this increases sales opportunities for the businesses.

As per claim 48, Nahan discloses:

- the first pricing scheme comprises retail pricing (col. 4 lines 54-61); and
- the second pricing scheme comprises wholesale pricing (col. 4 lines 54-61).

As per claim 49, Nahan discloses the second pricing scheme is transparent to the first participant (col. 13 lines 13-28).

As per claim 50, Nahan discloses the second pricing scheme is unavailable to the first participant (col. 13 lines 13-28).

As per claim 51, Nahan discloses the first pricing scheme is visible to the second participant (col. 13 lines 13-28).

As per claim 52, Nahan discloses the inventory of one or more items comprises goods or services or both goods or services (col. 4 lines 54-61).

As per claim 53, Nahan discloses another inventory of items available only to the second participant (col. 4 lines 27-38).

BD0003083

Art Unit: 2165

As per claim 54, Nahan discloses another inventory of items available only to the first participant (col. 4 lines 62-67; col. 5 lines 1-3).

As per claim 55, Nahan discloses:

- the first participant comprises a retail buyer (col. 7 lines 35-45); and
- the first participant comprises a dealer (col. 2 line 50-59).

As per claim 57, Nahan discloses a plurality of first participants, each of which is offered the inventory of one or more items under the first pricing scheme (col. 4 lines 16-53).

As per claim 58, Nahan does not specifically disclose a plurality of second participants, each of which is offered the inventory of one or more items under the second pricing scheme. However, Official Notice is taken that it was old and well known in the art at the time the invention was made that inventory is offered to second participants (i.e., business-to-business) under a second pricing scheme not available to first participants. An obvious example of this are automobile dealerships. When dealers want a vehicle that they do not currently have in stock, they have the option of searching other affiliated dealerships for the desired vehicle, and consummating a deal to transfer the desired vehicle to their dealership at appropriate dealer's (i.e., manufacturer's) costs, which constitutes a "wholesale" price in the eyes of a buyer (e.g., first participants). This dealer then has the option of selling this vehicle at manufacturer's retail price to the first participant.

Also, Nahan discloses using codes to portray an actual wholesale price or cost term (i.e., wholesale price term) and not displaying actual cost numerals for the wholesale price term.

BD0003084

Art Unit: 2165

This use as illustrated in Nahan (col. 13 lines 13-28) provides a desired mystery as to the actual wholesale price term for retail-tier participants, while disclosing to wholesale-tier participants actual wholesale costs on the same display.

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine old and well known art with Nahan to disclose the inventory being offered to a plurality of second participants, each of which is offered the inventory of one or more items under the second pricing scheme, because this increases sales opportunities for the businesses.

As per claim 59, Nahan discloses the first-tier electronic market and the second-tier electronic market share the data repository (col. 3 lines 29-44).

As per claim 60, Nahan discloses the second participant:

- can add, modify or delete items in the data repository (Abstract, col. 2 lines 60-64); and
- can specify the first pricing scheme, the second pricing scheme, or both (col. 7 line 60 thru col. 9 line 29).

As per claim 61, Nahan discloses the data repository comprises data records (Abstract; col. 2 line 60 thru col. 3 line 2; col. 4 lines 54-61; col. 13 lines 13-28).

As per claim 62, Nahan discloses:

- the first price comprises a business-to-consumer price (col. 13 lines 13-28); and
- the second price comprises a business-to-business price (col. 13 lines 13-28).

BD0003085

Art Unit: 2165

As per claim 63, Nahan discloses the second participant has privileges, unavailable to the first participant, that enable the second participant to access second-tier electronic market (col. 13 lines 13-28). Official Notice is taken that using codes to portray an actual wholesale price or cost term (i.e., wholesale price term) and not displaying actual cost numerals for the wholesale price term was old and well known in the art at the time the invention was made. This use as illustrated in Nahan (col. 13 lines 13-28) provides a desired mystery as to the actual wholesale price term for retail-tier participants, while disclosing to wholesale-tier participants actual wholesale costs on the same display.

Additionally, Official Notice is taken that it was old and well known in the art at the time the invention was made that inventory is offered to second participants (i.e., business-to-business) under a second pricing scheme not available to first participants. An obvious example of this are automobile dealerships. When dealers want a vehicle that they do not currently have in stock, they have the option of searching other affiliated dealerships for the desired vehicle, and consummating a deal to transfer the desired vehicle to their dealership at appropriate dealer's (i.e., manufacturer's) costs, which constitutes a "wholesale" price in the eyes of a buyer (e.g., first participants). This dealer then has the option of selling this vehicle at manufacturer's retail price to the first participant.

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine old and well known art with Nahan to disclose the second participant has privileges, unavailable to the first participant, that enable the second participant to access second-

BD0003086

Art Unit: 2165

tier electronic market, because this increases sales opportunities for the businesses and offers alternatives in controlling inventory.

As per claim 64, Nahan discloses the second participant comprises a trusted dealer (Abstract; col. 2 lines 50-59)

As per claim 65, Nahan discloses the first-tier and second-tier electronic markets are implemented on a same computer system (col. 2 lines 38-67; col. 3 lines 1-9).

As per claim 66, Nahan discloses the first-tier and second-tier electronic markets are implemented on separate computer systems interconnected by a network (col. 4 lines 1-6).

As per claim 67, Nahan discloses the two-tiered electronic market system is implemented on a market maker computer system (fig. 1 [10]; col. 5 lines 45-48).

As per claim 68, Nahan discloses a participant is granted access to the first-tier electronic market or the second-tier electronic market (col. 7 lines 34-44).

As per claim 69, Nahan discloses a login process that grants the participant access to the second-tier electronic market if the participant has been pre-approved (col. 7 lines 34-44).

As per claim 70, Nahan discloses the login process determines that the participant is pre-approved to access the second-tier electronic market if the participant enters a predetermined login ID or password or both (col. 7 lines 34-44).

BD0003087

Art Unit: 2165

Claim 71 is written as a method and contains the same limitations as claim 46; therefore, the same rejection is applied.

As per claims 72-73, Nahan discloses storing in the data repository a predetermined fixed rate that determines a price differential between the first-tier and the second-tier electronic markets (col. 4 lines 54-61; col. 13 lines 13-28). Also, Nahan does not specifically disclose the predetermined price differential is established by one or more dealer participants in the second tier electronic market. However, Official Notice is taken that it was old and well known in the art at the time the invention was made that inventory is offered to second participants (i.e., business-to-business) under a second pricing scheme. An obvious example of this are automobile dealerships. When dealers want a vehicle that they do not currently have in stock, they have the option of searching other affiliated dealerships for the desired vehicle, and consummating a deal to transfer the desired vehicle to their dealership at appropriate dealer's (i.e., manufacturer's) costs, which constitutes a "wholesale" price in the eyes of a buyer (e.g., first participants). This dealer then has the option of selling this vehicle at manufacturer's retail price to the first participant.

Additionally, Official Notice is taken that using codes to portray an actual wholesale price or cost term (i.e., wholesale price term) and not displaying actual cost numerals for the wholesale price term was old and well known in the art at the time the invention was made. This use

BD0003088

Art Unit: 2165

provides a desired mystery as to the actual wholesale price term for retail-tier participants while disclosing to wholesale-tier participants actual wholesale costs.

Therefore, it would have been obvious to one skilled in the art at the time the invention was made to combine old and well known art with Nahan to disclose storing in the data repository a predetermined fixed rate that determines a price differential between the first-tier and the second-tier electronic markets and the predetermined price differential is established by one or more dealer participants in the second tier electronic market, because this increases sales opportunities for the businesses.

Claim 74 is written as a method and contains the same limitations as claims 72-73; therefore, the same rejection is applied.

As per claim 75, Nahan discloses facilitating a financial transaction in the first-tier electronic market between a consumer participant and a dealer participant, the transaction having finality of transaction (col. 2 lines 38-45).

As per claim 76, Nahan discloses facilitating a financial transaction in the second-tier electronic market between a first dealer participant and another dealer participant, the transaction having finality of transaction (col. 2 lines 38-45)

Claim 77 is written as a method and contains the same limitations as claims 75; therefore, the same rejection is applied.

Claim 78 is written as a method and contains the same limitations as claims 76; therefore, the same rejection is applied.

BD0003089

Art Unit: 2165

As per claim 79, Nahan discloses:

- receiving payment information from at least one participant in the first or second electronic market (col. 13 lines 54-67; col. 14 lines 1-5);
- processing the received payment information (col. 13 lines 54-67; col. 14 lines 1-5; col. 14 lines 46-49); and
- transferring an ownership interest in an item to the at least one participant (col. 14 lines 31-46).

As per claim 90, Nahan discloses:

- a first storage location for storing information describing an item for sale (col. 2 line 60 thru col. 3 line 9; col. 5 line 49 thru col. 6 line 25);
- a second data storage location for storing a user identification (col. 2 line 60 thru col. 3 line 9; col. 5 line 49 thru col. 6 line 25); and
- a display process for selectively displaying, depending on the user identification stored in the second storage location, the retail price term to retail-tier participants and at least the wholesale price term to wholesale-tier participants (col. 7 lines 35-45; col. 12 lines 52-58; col. 13 lines 13-28), using predefined or disclosed codes for wholesale-tier participants.

Additionally, Official Notice is taken that using codes to portray an actual wholesale price or cost term (i.e., wholesale price term) and not displaying actual cost numerals for the wholesale price term was old and well known in the art at the time the invention was made. This use as

BD0003090



Art Unit: 2165

illustrated in Nahan (col. 13 lines 13-28) provides a desired mystery as to the actual wholesale price term for retail-tier participants, while disclosing to wholesale-tier participants actual wholesale costs on the same display.

*Allowable Subject Matter*

8. Claims 80-89 and 91-95 are allowable.

9. The following is a statement of reasons for the indication of allowable subject matter:

The prior art, when considered as a whole, fails to teach or fairly suggest a method for facilitating electronic commerce using an electronic system having at least a wholesale tier and a retail tier, the method comprising:

- differentiating retail auction participants from wholesale auction participants;
- presenting for auction an item description stored in a database operationally coupled to the electronic auction system, the presentation of the item including a current retail bid amount; and
- receiving a wholesale bid from at least one wholesale-tier participant; selectively displacing the current retail bid if the received wholesale bid increased by a predetermined amount is greater than the current retail bid.

Prior art cannot be found that provides the features identified above for the auction aspect of the invention. Art that was found with some features of this invention was invented after the

BD0003091

Art Unit: 2165

priority date of the invention: 11/07/1995, based on the parent application, #08/554,704 dated 11/07/1995, now U.S. Patent No. 5,845,265, printed 12/01/1998.

*Response to Arguments*

10. Applicant's amendment deleted claims 11-45 and added new claims 46-95, necessitating new grounds for rejection. Applicant's arguments filed 28 August 2000 have been fully considered, but they are not persuasive.

While applicant's arguments for claims 11-45 and 46-95 may have some relevance, new grounds for rejection have been generated for the claims 46-79 and 90 (see paragraphs 4-7 above), necessitated by applicant's amendment, which makes his arguments moot. Therefore, rejection of claims 46-79 and 90 is maintained. Claims 80-89 and 91-95 have been indicated above as allowable subject matter.

*Conclusion*

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO**

**BD0003092**

Art Unit: 2165

MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Fraser (U.S. Patent No. 5,664,115) discloses a method and apparatus of automatically matching sellers of property with potential buyers through a communications network (preferably the Internet) in which a host system communicates with the sellers and the potential buyers over telephone or dedicated data transmission lines.
- Fisher et al. (PCT No. WO 97/37315) discloses a system and method for conducting a multi-person, interactive auction, in a variety of formats;
- Shoham et al. (PCT No. WO 00/08578) discloses a universal auction specification system including a network-accessible set of trading primitives and a market specification console that includes a script generator for combining the set of trading primitives into a temporal protocol script representing a particular auction specification;

BD0003093

Art Unit: 2165

- Alaia et al (PCT No. WO 00/17797) discloses a method for conducting electronic auctions;
- Egan (PCT No. WO 00/62231) discloses a system on a Web-site that supports the "online-to-offline" retail market;
- Garcia, Beatrice; "Fast-moving pace is not for the shy or the undecided," Herald Real Estate; Miami Herald, Final Edition, pg. 4G; 05 May 1991, discloses some auction companies offer a discount on the sale price if a bidder has pre-arranged financing and can close in less time;
- Feldman, Robert; Mehra, Rajnish; "Auctions: Theory and applications," International Monetary fund papers; v40n3, pp: 485-511; September 1993, discloses an auction can discriminate among bidders in the sense that they can pay different prices according to the amount they bid; and
- "Go for the Green- Country club Members Scrambling to buy PGA West, Mission Hills Courses at Auction," Los Angeles Times; Home Edition, colD 1, pg. 3; 20 June 1993, discloses bidders paying cash will be given a 15% price discount.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Forest Thompson whose telephone number is (703) 306-5449. The examiner can normally be reached Monday-Friday from 7:30 AM to 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin, can be reached at (703) 308-1065.

BD0003094


Application/Control Number: 09/253,057


Page 17

Art Unit: 2165

The fax number for Formal or Official faxes to Technology Center 2700 is (703) 308-9051 or 9052. Draft or Informal faxes for this Art Unit can be submitted to (703) 308-5357.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 305-3900.

December 7, 2000 /FOT 

  
VINCENT MILLIN  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2100

BD0003095

FORM PTO-892		U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE		SERIAL NO. 09/253,057	GROUP ART UNIT 2165	ATTACHMENT TO PAPER NO.	15
NOTICE OF REFERENCES CITED				APPLICANT(S) WOOLSTON			
U.S. PATENT DOCUMENTS							
*		DOCUMENT NO.	DATE	NAME	CLASS	SUB-CLASS	FILING DATE
	A						
	B						
	C						
	D						
	E						
	F						
	G						
	H						
	I						
	J						
	K						
FOREIGN PATENT DOCUMENTS							
*		DOCUMENT NO.	DATE	COUNTRY	NAME	CLASS	SUB-CLASS
✓	L	97/37315	03/19/1995	WIPO	FISHER		
✓	M	00/62231	04/12/1999	WIPO	EGAN		
✓	N	00/17797	09/17/1998	WIPO	ALAIA et al.		
✓	O	00/06578	08/07/1998	WIPO	SHOHAM et al.		
	P						
	Q						
OTHER REFERENCES (Including Author, Title, Date, Pertinent Pages, Etc.)							
✓	R	"Go for the Green- Country club Members Scrambling to buy PGA West, Mission Hills Courses at Auction," Los Angeles Times; Home Edition, colD 1, pg. 3; 20 June 1993					
✓	S	Feldman, Robert; Mehra, Rajnish; "Auctions: Theory and applications," International Monetary fund papers; v40n3, pp: 485-511; September 1993					
✓	T	Garcia, Beatrice; "Fast-moving pace is not for the shy or the undecided," Herald Real Estate; Miami Herald, Final Edition, pg. 4G; 05 May 1991					
	U						
EXAMINER Forest Thompson Jr.			DATE December 7, 2000		Form 892ccs2106b		
<p>* A copy of this reference is not being furnished with this office action. (See Manual of Patent Examining Procedure, section 707.05(a).)</p>							

BD0003096

3488

1 convincing to me.

2 Q. All right. Did you study the Gifford '785 patent.  
3 Sir?

4 A. Yes, I did.

5 Q. And you realize that the Gifford '785 patent was  
6 not considered by the '265 examiner, right?

7 A. Correct.

8 Q. And it related to processing payment and credit  
9 card transactions electronically, right?

10 A. Yes.

11 Q. And you agree that if, if, for example, the ANC  
12 system lacked a payment processor, that one of ordinary  
13 skill in the art simply combined Gifford with ANC, right?

14 THE COURT: Yes, sir.

15 MR. STILLMAN: Your Honor, again, beyond the  
16 scope. I didn't ask anything about Gifford.

17 MR. RANDALL: But he did ask whether ANC satisfied  
18 all the elements or not, and this witness provided an  
19 opinion regarding obviousness regarding ANC.

20 THE COURT: Objection is overruled.

21 A. The Gifford system is a, talks about displaying of  
22 digital advertisement and connecting them with some  
23 payments. No, I don't think it's obvious that you would  
24 connect that type of system to ANC.

25 Q. You don't think that one of ordinary skill in the

PAUL L. McMANUS, COURT REPORTER

3482

1 A. It's, it is -- that's a generic term that you're  
2 using. I don't think it's the electronic market of the '265  
3 patent.

4 MR. RANDALL: Can you show number 44, please?

5 This is exhibit 435, and it's at Bates stamp No.  
6 3898 of exhibit 435.

7 BY MR. RANDALL:

8 Q. Here the examiner, the patent examiner, looking at  
9 the exact same specification that we have before us in this  
10 case, is saying that Mahan discloses, and then in that third  
11 highlighted line, electronic market. Do you see that?

12 A. Yes.

13 Q. Okay. At least the Patent Office's person of  
14 ordinary skill in the art in 1995 would understand the Mahan  
15 patent to disclose an electronic market, correct?

16 A. That's -- of course those are the words there.

17 The Court has defined an electronic market for us in the  
18 context of this case, and certainly this patent examiner  
19 didn't know anything about that since this happened first.

20 Q. Would you agree that the Patent Office's person of  
21 ordinary skill in the art in '95, looking at the Mahan  
22 patent, would understand that it disclosed an electronic  
23 market, among other things?

24 A. Yes.

25 Q. Would you agree that the Patent Office's person of

PAUL L. McMANUS, COURT REPORTER

3481

1 art would be able to combine the Gifford payment processor  
2 along with the ANC system in '95?

3 A. I don't think there's any motivation to do that.

4 Q. Certainly one of the ordinary skill in the art  
5 would be aware of both systems, right?

6 A. Yes.

7 Q. And if one -- if for example the ANC system does  
8 not have a payment processor, and wanted one, one would be  
9 motivated to look around for one that was known in the art,  
10 right?

11 A. Perhaps.

12 Q. And if you looked around in '95 to find a payment  
13 processor, one of the payment processors you could use would  
14 be Gifford, right?

15 A. Yes.

16 Q. Gifford also taught terminal authorization as  
17 well, correct?

18 A. Yes.

19 Q. And if you wanted to add terminal authorization to  
20 a reference in combining to render the '265 claims obvious,  
21 you could add the Gifford terminal authorization to it,  
22 couldn't you?

23 A. Perhaps.

24 Q. The Mahan patent discloses an electronic market,  
25 correct?

PAUL L. McMANUS, COURT REPORTER

3483

1 ordinary skill in the art in 1995, looking at the Mahan  
2 patent, would understand that it disclosed transferring an  
3 ownership interest in an item?

4 A. What the examiner would have seen there is that  
5 once payment has been made, then the Mahan system did send a  
6 notification between the buyer and the seller. So that much  
7 is true.

8 Q. No, my question was would the Patent Office's  
9 person of ordinary skill in the art in 1995 understand from  
10 looking at Mahan that it discloses, among other things,  
11 transferring an ownership interest in an item? Yes or no.

12 A. Well, it, it documents that payment was made.

13 Q. I'm actually not asking for the opinion based on  
14 your person of ordinary skill in the art, I'm asking about  
15 the Patent Office's person of ordinary skill in the art.

16 Would you agree, looking at this rejection by the  
17 Patent Office on the same specification we're talking about  
18 here, would you agree that the Patent Office's person of  
19 ordinary skill in the art in 1995, looking at Mahan, would  
20 understand that Mahan discloses, among other things,  
21 transferring an ownership interest in an item?

22 A. Yes.

23 MR. RANDALL: Can you go up in the article? Stop  
24 right there.

25 BY MR. RANDALL:

PAUL L. McMANUS, COURT REPORTER



US00626651B1

(12) **United States Patent**  
Woolston

(10) Patent No.: **US 6,266,651 B1**  
(45) Date of Patent: **Jul. 24, 2001**

(54) **FACILITATING ELECTRONIC COMMERCE  
THROUGH TWO-TIERED ELECTRONIC  
MARKETS AND AUCTIONS**

00/08578 \* 8/1998 (WO).  
00/17797 \* 9/1998 (WO).  
00/62231 \* 4/1999 (WO).

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"Go for the Green—Country club Members Scrambling to buy PGA West, Mission Hills Courses at Auction," Los Angeles Times; Home Edition, colD 1, p. 3; Jun. 20, 1993.\*  
Feldman, Robert; Mehra, Rajnish; "Auctions: Theory and applications," International Monetary fund papers; v40n3, pp: 485–511; Sep. 1993.\*

(List continued on next page.)

(75) Inventor: **Thomas G. Woolston, Alexandria, VA (US)**

(73) Assignee: **MercExchange LLC (Va), Alexandria, VA (US)**

(\*) Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) Appl. No.: **09/253,057**

(22) Filed: **Feb. 19, 1999**

#### Related U.S. Application Data

(60) Continuation of application No. 09/166,779, filed on Oct. 6, 1998, which is a division of application No. 08/554,704, filed on Nov. 7, 1995, now Pat. No. 5,845,265, which is a continuation-in-part of application No. 08/427,820, filed on Apr. 26, 1995.

(51) Int. Cl.<sup>7</sup> ..... **G06F 17/60**

(52) U.S. Cl. .... **705/27**

(58) Field of Search ..... **705/27, 26**

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Primary Examiner—V. Miller

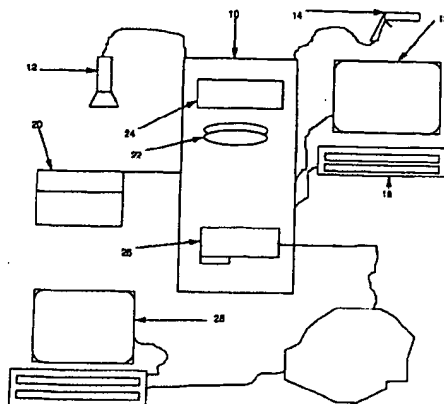
Assistant Examiner—Forest O Thompson, Jr.

(74) Attorney, Agent, or Firm—Burns, Doane, Swecker & Mathis, LLP

#### (57) ABSTRACT

A computer-implemented two-tiered electronic market system includes a data repository storing information corresponding to an inventory of one or more available items and a first-tier electronic market (e.g., a retail tier) that provides a first participant (e.g., a retail consumer) access to the inventory of one or more items in the data repository. The inventory is offered to the first participant under a first (e.g., retail) pricing scheme. The two-tiered electronic market system also includes a second-tier electronic market (e.g., a wholesale tier) that provides a second participant (e.g., a wholesale dealer), different from the first participant, access to the inventory of one or more items in the data repository. The inventory is offered to the second participant under a second (e.g., wholesale) pricing scheme different from the first pricing scheme. Electronic commerce is facilitated using an electronic auction system having at least a wholesale tier and a retail tier by presenting for auction an item description stored in a database operationally coupled to the electronic auction system. The presentation of the item includes a current retail bid amount. A wholesale bid is received from at least one wholesale-tier participant and the current retail bid amount is selectively displaced if the received wholesale bid increased by a predetermined amount is greater than the current retail bid.

**50 Claims, 13 Drawing Sheets**





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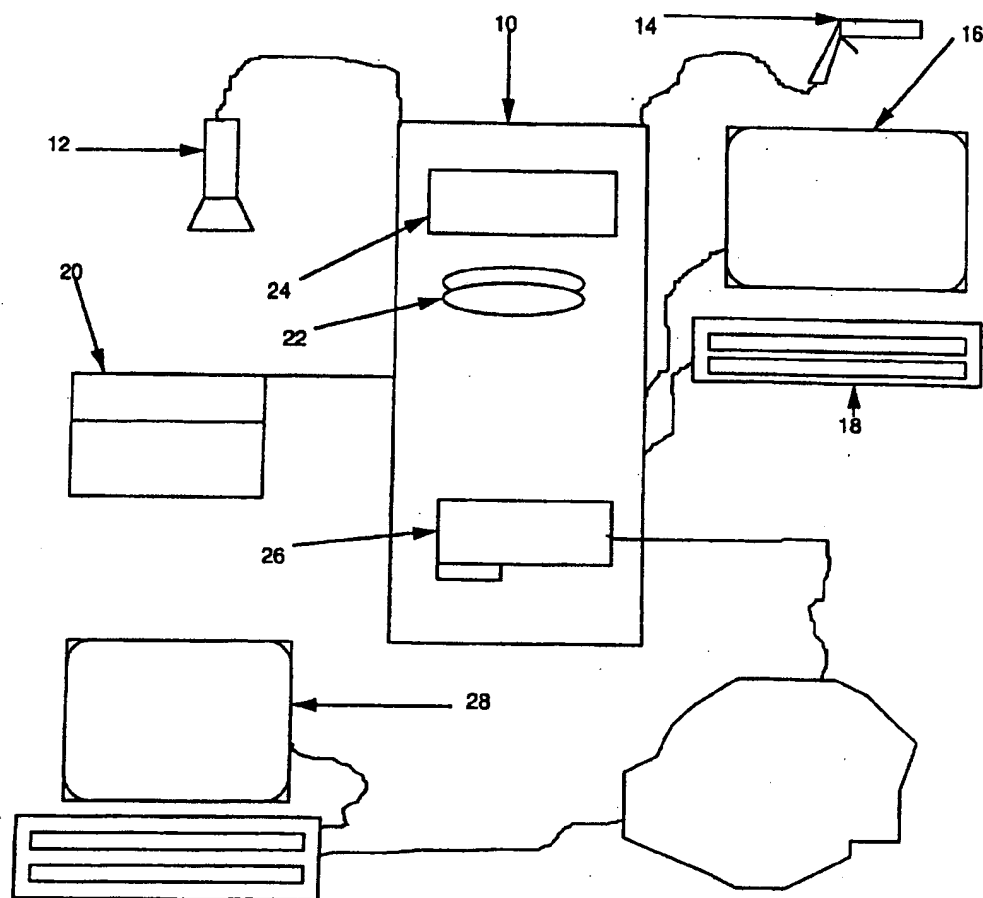


FIGURE 1

FIGURE 2

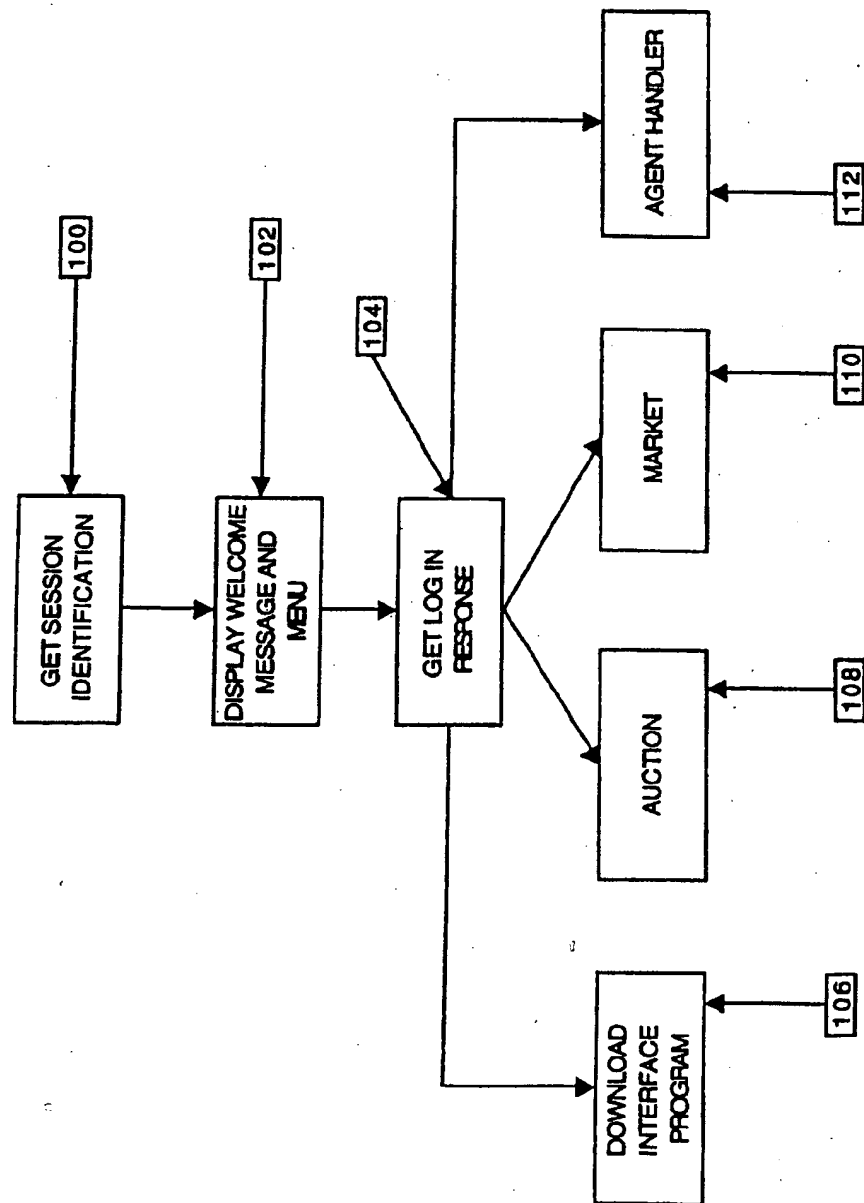
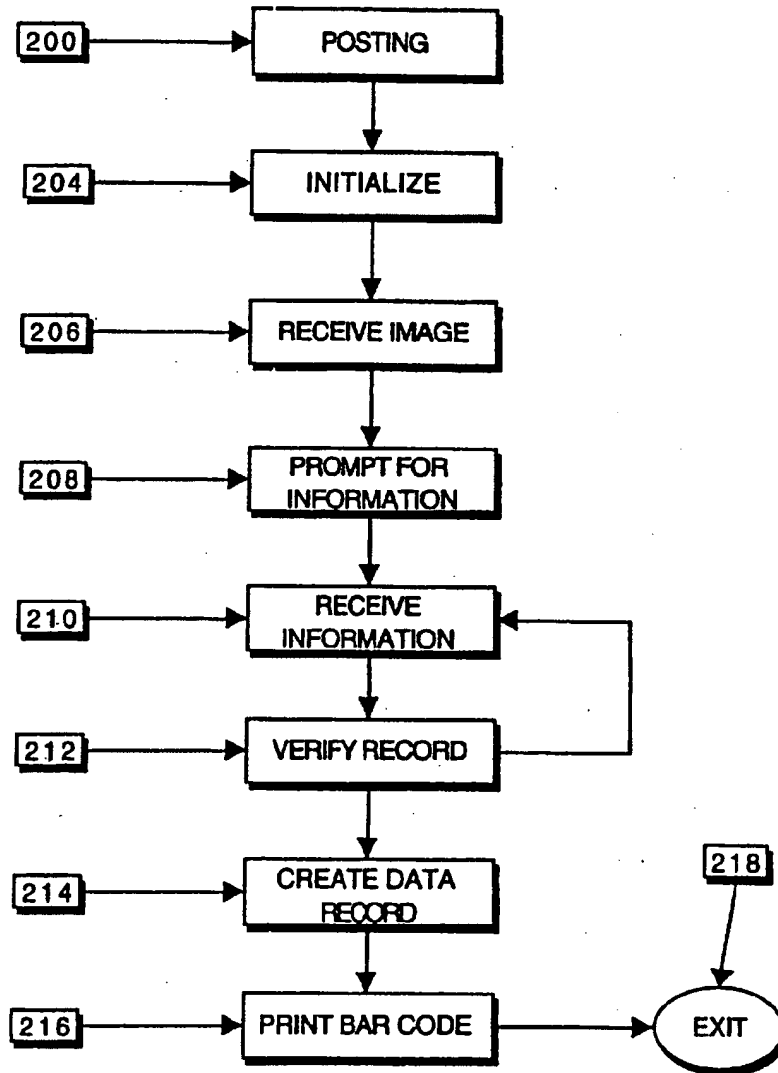


FIGURE 3



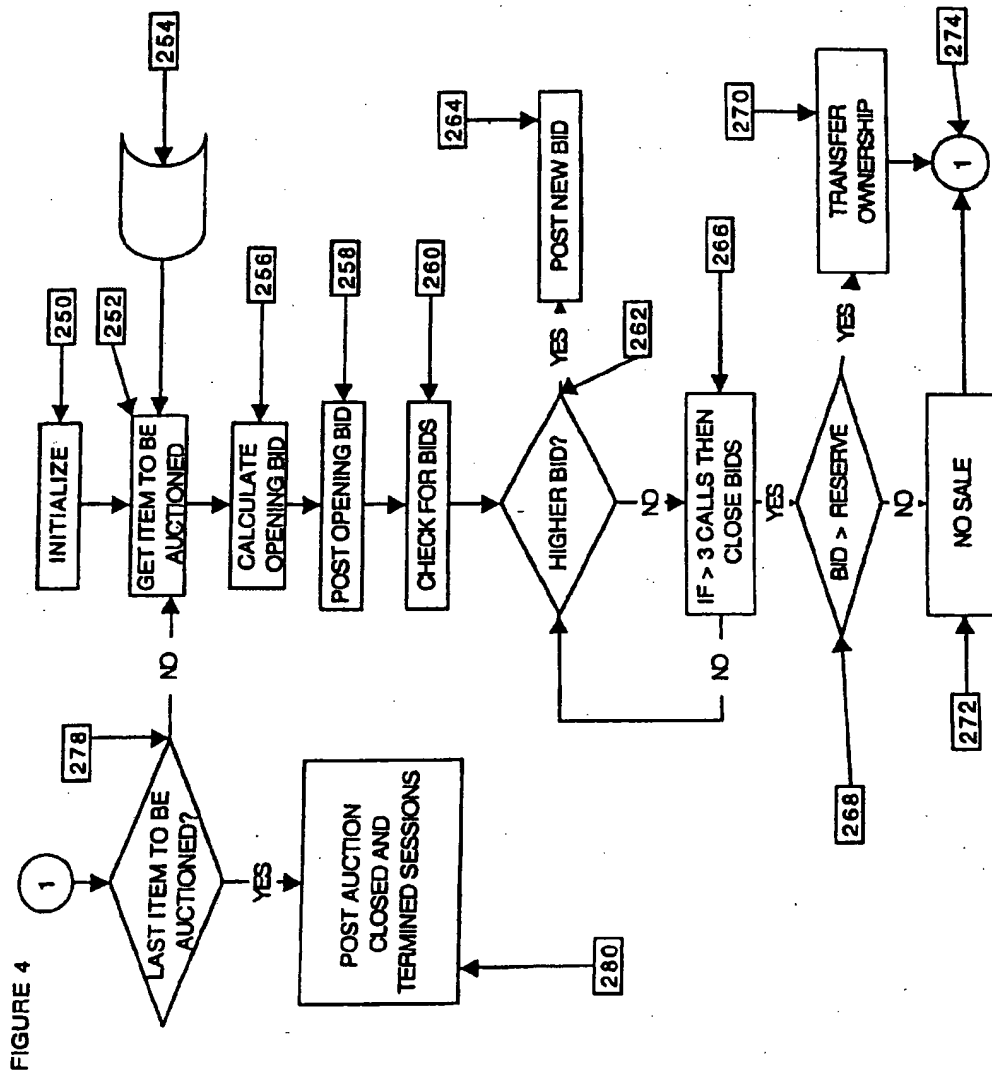


FIGURE 5

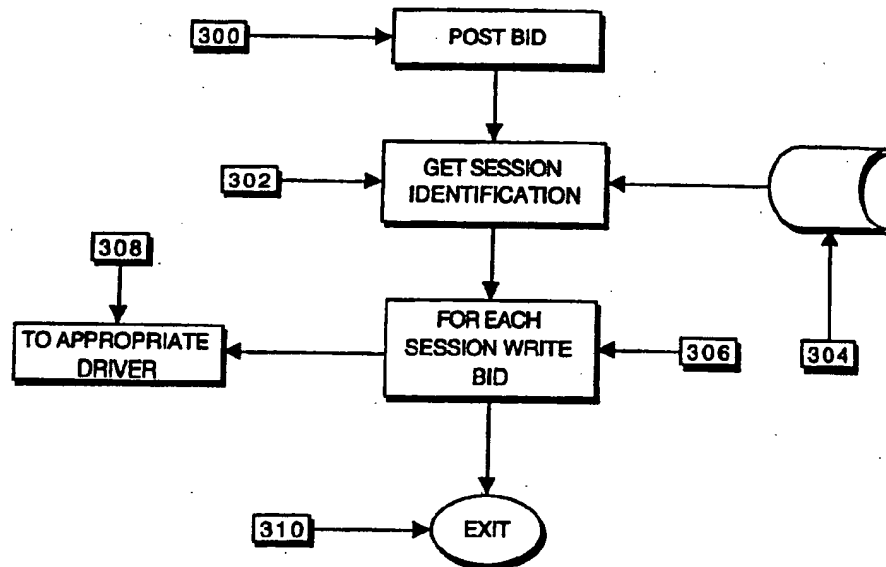


FIGURE 6

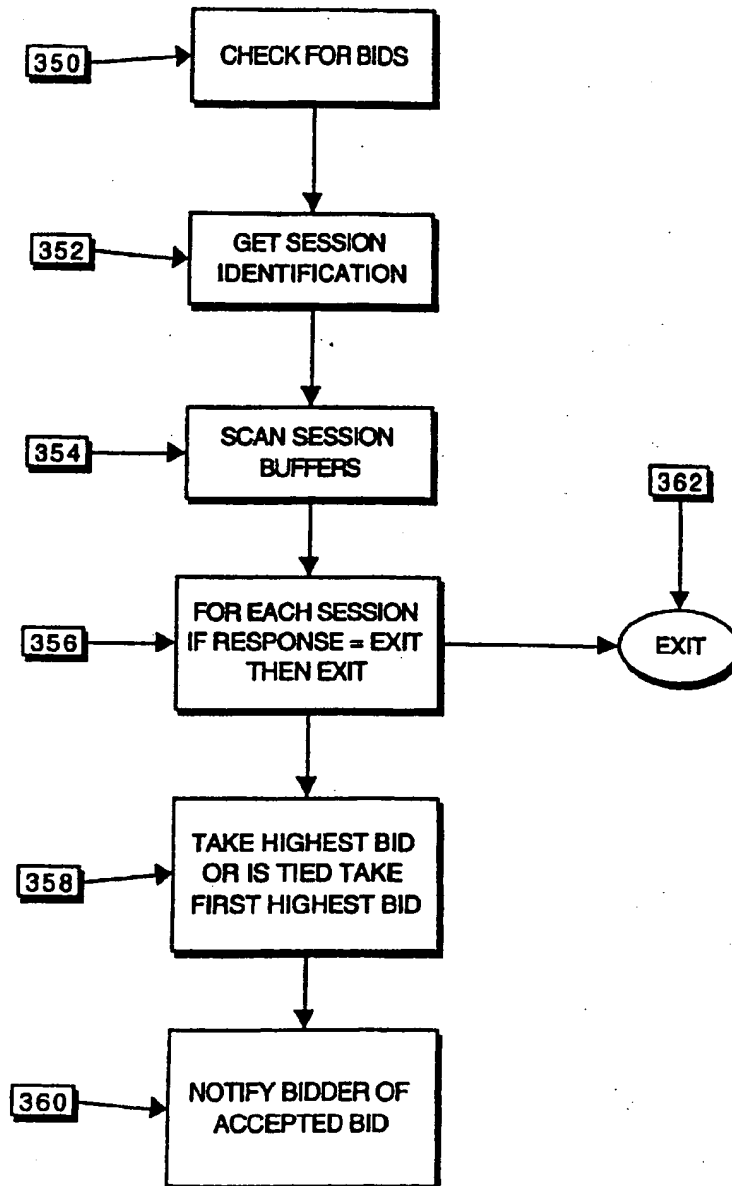


FIGURE 7

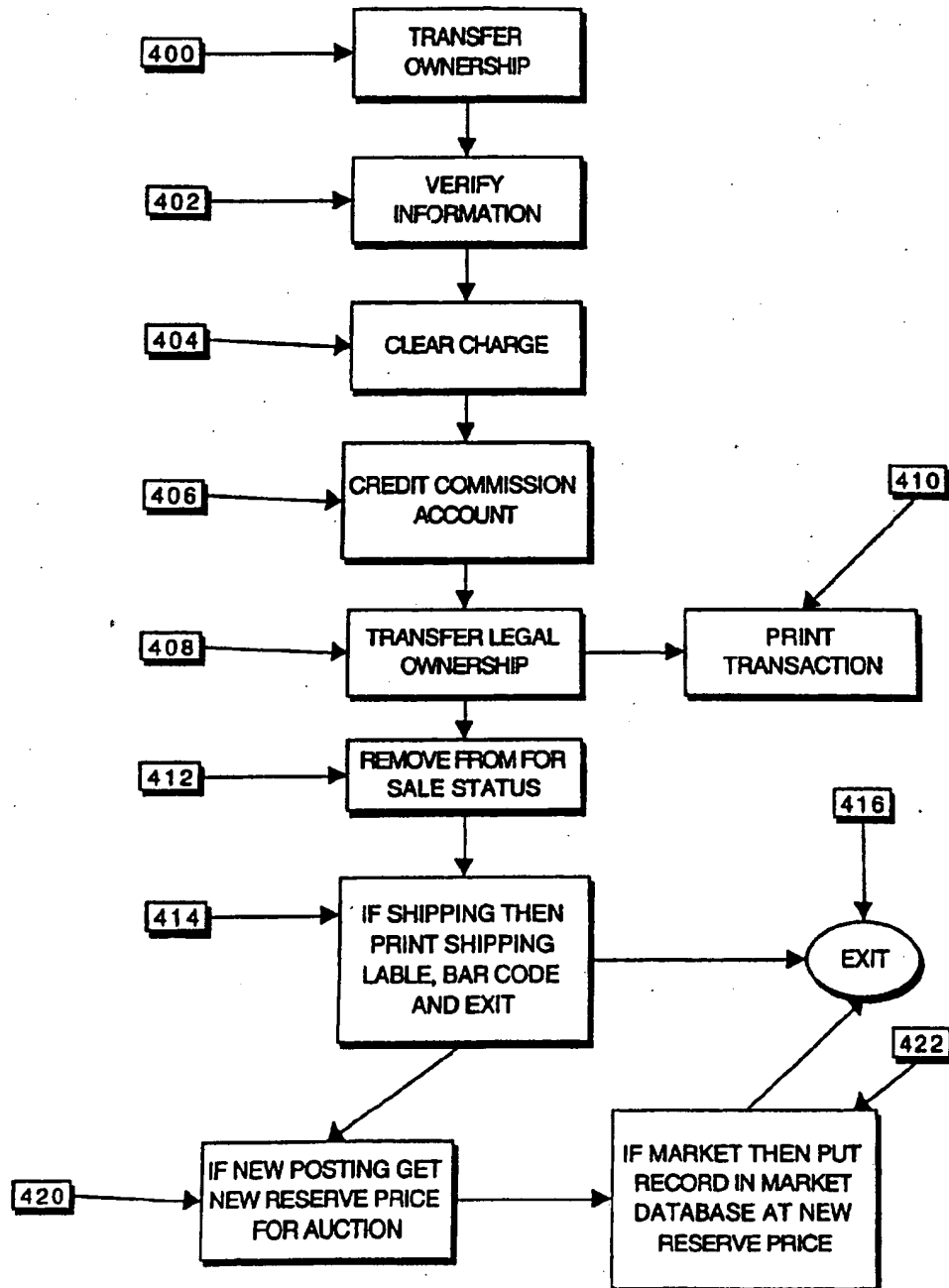




FIGURE 8

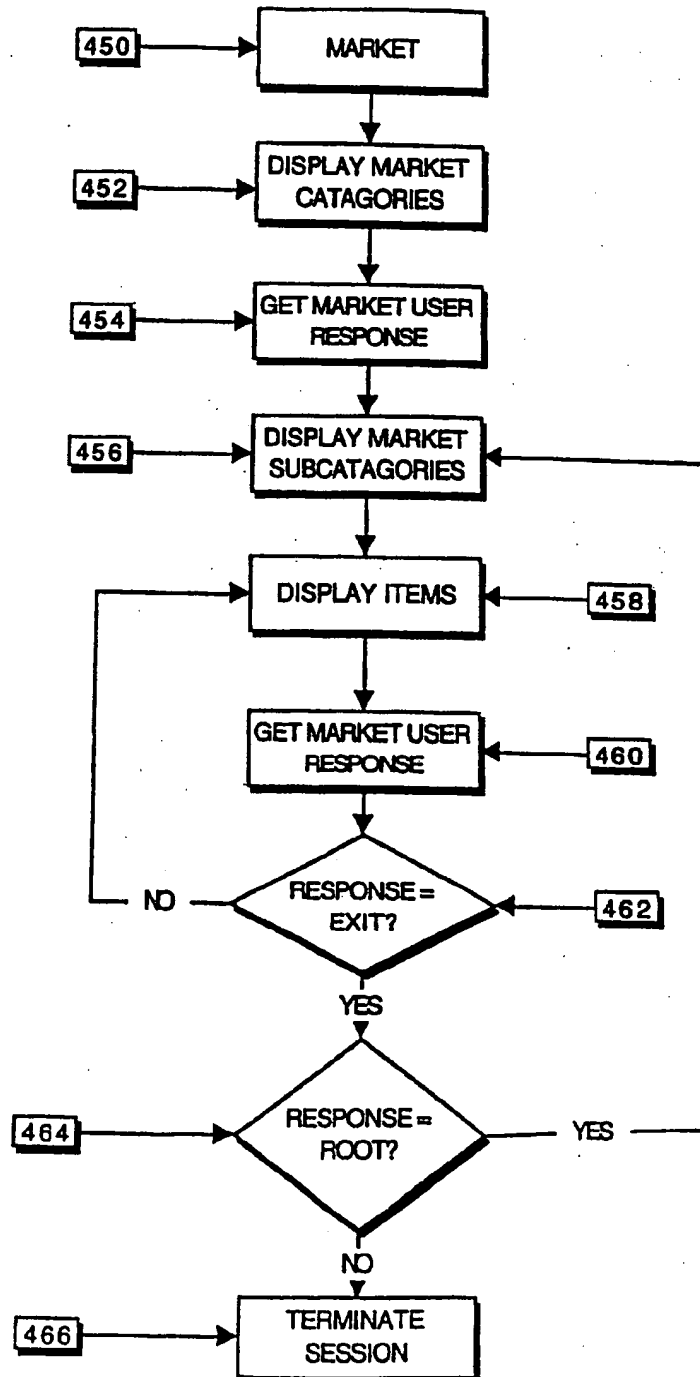


FIGURE 9

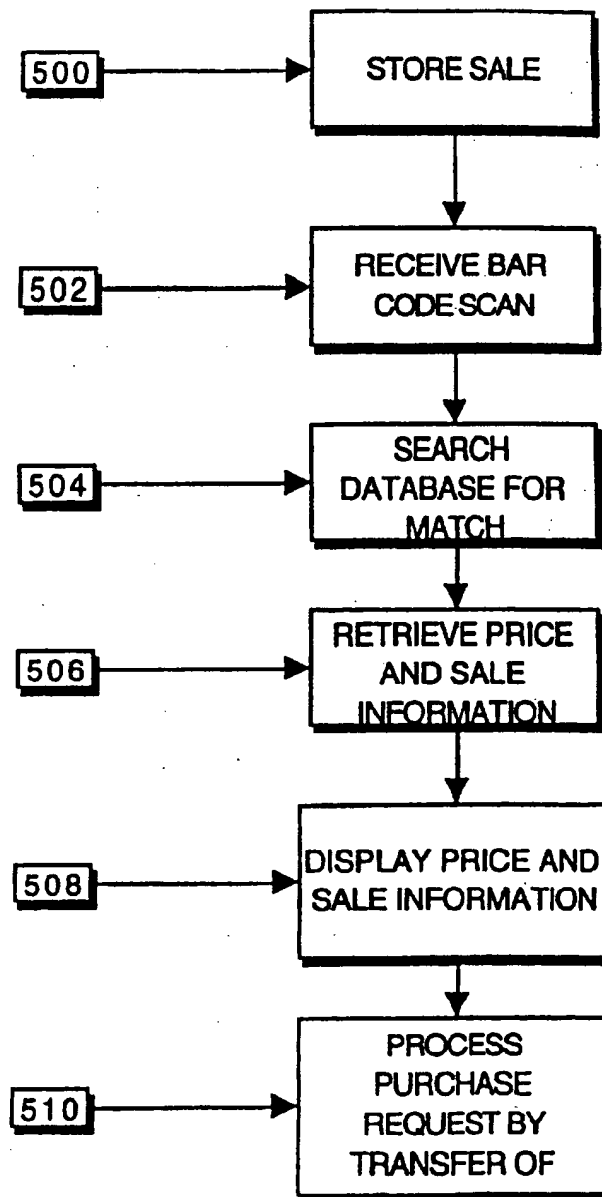


FIGURE 10

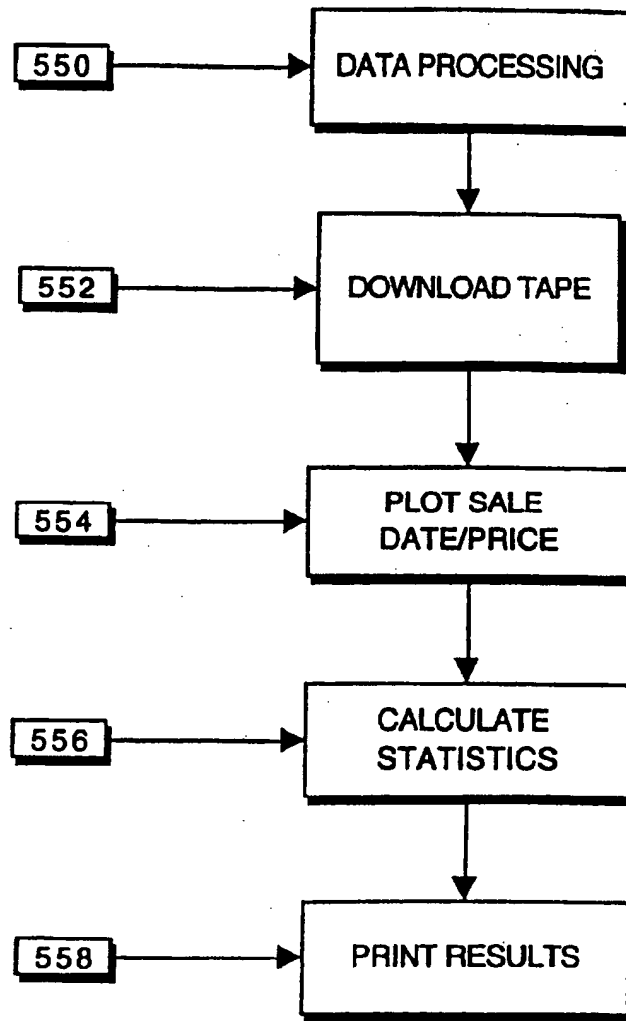


FIGURE 11

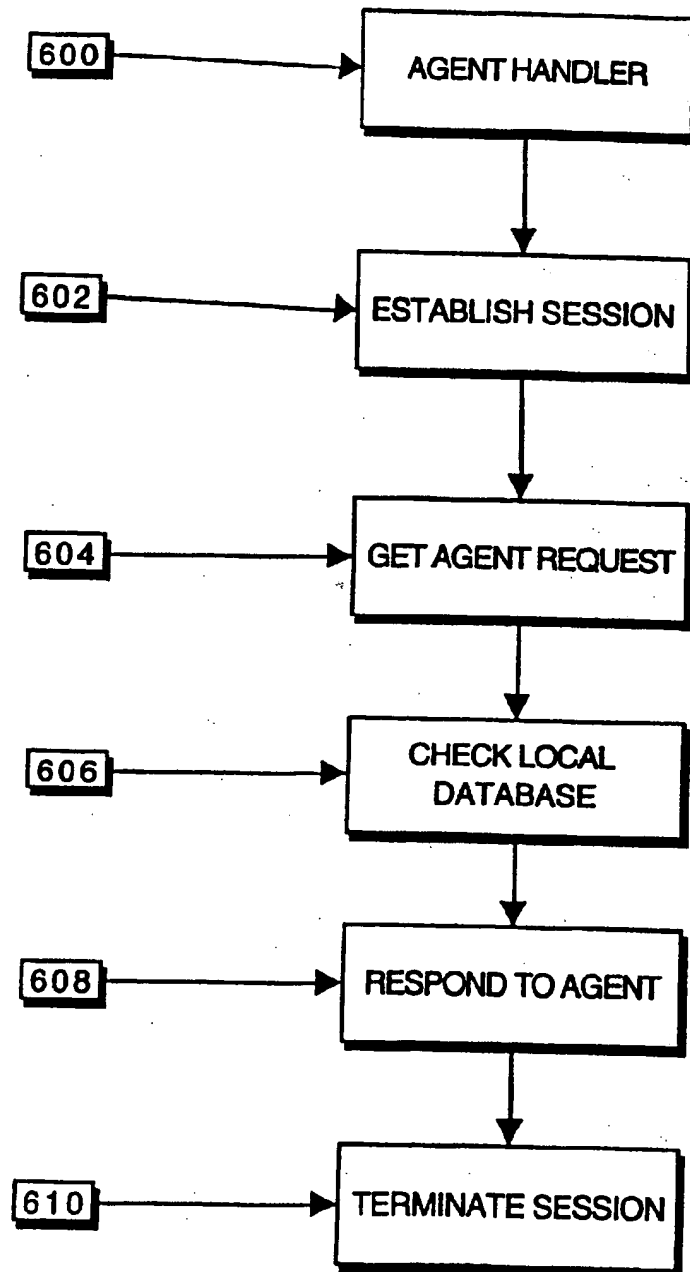


FIGURE 12

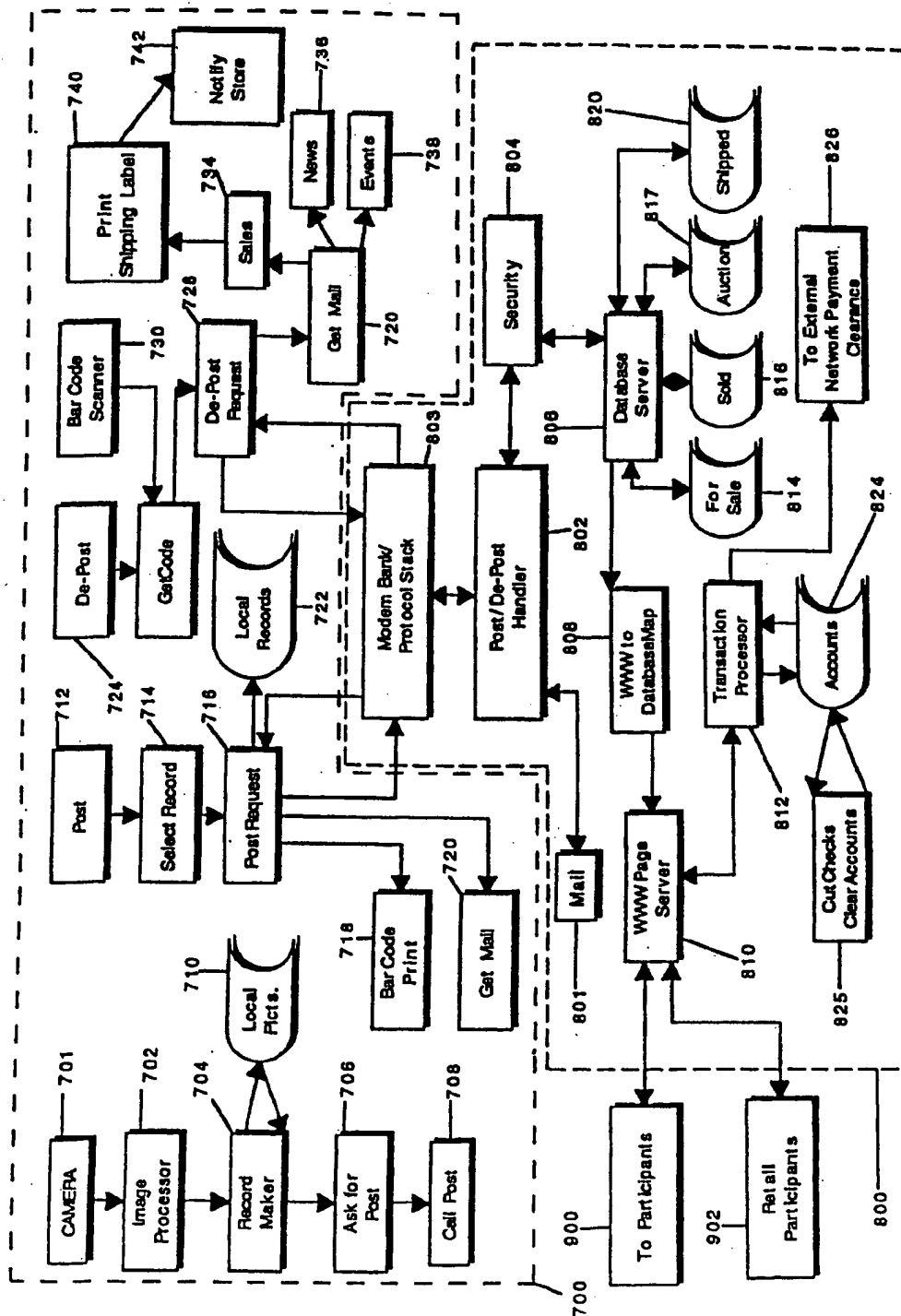
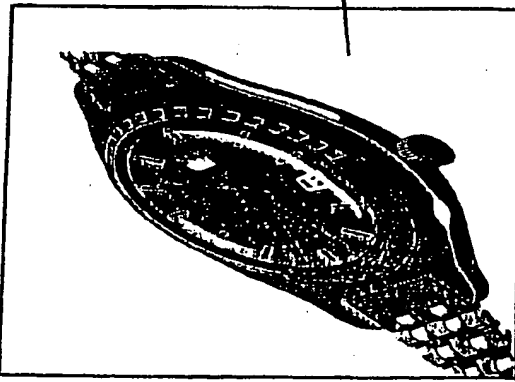


FIGURE 13

CLEANET - POST/D E-POST					
CAMERA	POST	SALE	DE-POST	FILES	MAIL
ITEM: 924	9 28	9 22	9 30	9 34	9 38
1974 ROLEX SEA-DWELLER					
					
CATEGORY: <input type="text"/> 940 942 SUBCATEGORY: <input type="text"/> 944 946 CODE: <input type="text"/> 948 POST DATE: <input type="text"/> 950 951 STORE: TOM'S COLLECTABLES <input type="text"/> 952 MARKET: <input type="text"/> 9 20 954					
DISCRIPTION: <input type="text"/> 956					
PRICE: <input type="text"/> 964 \$4,500.00 US <input type="text"/> 962 RESERVE PRICE: <input type="text"/> 960 \$4,250.00 US <input type="text"/> 958					

This is a mint condition Rolex that was a gift to the previous original owner. Never worn. A gem like this does not come around often.

## FACILITATING ELECTRONIC COMMERCE THROUGH TWO-TIERED ELECTRONIC MARKETS AND AUCTIONS

This patent application is a continuation U.S. patent application Ser. No. 09/166,779 filed Oct. 6, 1998, which is a divisional of U.S. patent application Ser. No. 08/554,704 filed Nov. 7, 1995, now U.S. Pat. No. 5,845,265, issued Dec. 1, 1998, which is a continuation-in-part of U.S. patent application Ser. No. 08/427,820 filed Apr. 26, 1995, all of which are incorporated herein by reference in their entirety.

### BACKGROUND OF THE INVENTION

The present invention relates to used and collectible goods offered for sale by an electronic network of consignment stores. More specifically, the present invention may be an electronic "market maker" for collectable and used goods, a means for electronic "presentment" of goods for sale, and an electronic agent to search the network for hard to find goods. In a second embodiment to the present invention, a low cost posting terminal allows the virtual presentment of goods to market and establishes a two tiered market of retail and wholesale sales.

Certain items and used goods have a large following of collectors. These items include baseball cards, dolls, pens, watches, comic books, stamps, coins, and the like. It is well known to establish shops specializing in these items. It is also well-known to establish boards for the sale of used goods. And is known to sell new goods on a special television channel like the Home Shopping Channel.

The prior art does not provide a means to electronically market used goods or provide an avenue to allow participants to speculate on the price of collectable or used goods in an electronic market place. Moreover, the art does not show a way for small to medium size business to use a low cost posting terminal in conjunction with a market maker computer to collectively create a virtual market for used and collectible goods. Thus, to address the short comings of the art the present invention has the following objectives:

### SUMMARY OF THE INVENTION

To establish a low cost computer means for a used good and/or consignment stores to establish a "trusted" computerized market for used and collectible goods.

To establish a computer means to administrate and provide inventory tracking to used good and/or consignment stores when the stores make a virtual presentment of a good to a computerized market and the good is sold at the virtual market and/or the good is sold through the store front.

To establish a computer means to double tier a computerized market for goods, where the first tier is a retail price and the second tier is a wholesale or dealer to dealer price and an authorized dealer has pre-approved access to the dealer-to-dealer price and may charge and display the retail price to a local store customer.

To establish a computer means for archiving records of transactions in a computerized market for collectible and used goods and distributing the archive to computer terminals that may then research and analyze valuation and price trends of collectible and used goods in the computerized market.

To establish a computer means for a used good store or consignment store to sell used goods and collectibles electronically and to provide the automatic electronic resale of goods purchased.

To establish a market for goods with a dominant electronic "market maker" node to allow collectors to speculate on the collectable goods market.

To provide the excitement of a "live" auction house type atmosphere to remote participants in a electronic auction.

To provide data analysis to the market makers of collectable good or consignment node users on the price, price movements, and quantity of collectable goods in the virtual market.

To provide an electronic agent interface for participants to search a plurality of consignment nodes to search for a used good or collectable item.

To provide a means to track down the owner of a particular used or collectable good.

Further, to provide a trusted network of consignment nodes that act as brokers to provide a means to electronically present a used good or collectable to an electronic market.

The foregoing objects and advantages of the invention are illustrative of those which can be achieved by the present invention and are not intended to be exhaustive or limiting of the possible advantages which can be realized. Thus, these and other objects and advantages of the invention will be apparent from the description herein or can be learned from practicing the invention, both as embodied herein or as modified in view of any variations which may be apparent to those skilled in the art. Accordingly the present invention resided in the novel methods, arrangements, combinations and improvements herein shown and described.

The present invention is a network of consignment nodes and a low cost easy to use posting terminal for the virtual presentment of goods to market. A consignment node is a computer database of used goods preferably operated by a used good, collectable shop keeper or a bailee. A posting terminal is a low cost easy to use computer and computer peripheral devices used by a small store owner to present goods to a computerized market and track the sales of goods and control the posted inventory. All consignment nodes users or operators, hereinafter users, are "trusted" licensees or franchisers of the software and hardware necessary to create and operate a consignment node. Thus, the network provides a trusted means for consignment node users, e.g. shop keepers, to establish electronic markets for collectable goods, establish electronic auctions, establish a means for searching each others shops to locate hard to find collectibles items, and a means to electronically present goods to a market. The present invention will allow, or license, certain consignments nodes to become a dominant market maker for a particular class of goods, for example, a consignment node franchise may be given the rights to establish the dominant market for collectable antique pens. It is understood, a central market maker computer may be virtually divided into different markets with posting terminals used as the means for the market to obtain virtual title goods. Other consignment nodes, after taking physical possession of a good, may make an electronic presentment of that good to such a dominant consignment node market. Thus, a local collector of antique pens may bring a pen to a convenient consignment node in Smalltown, USA, the consignment network would allow this collector to electronically "present" his pen to the dominant market make node for antique pens in for example, Chicago. Participants, e.g. customers and collectors (hereinafter "participants"), may reach a dominant node's market, or any other consignment nodes electronic store, from his or her home by logging on from a PC located at the participant's home to their locally operated consignment node and reaching the distant con-

signment node through the network of consignment nodes. Thus, each consignment node user, e.g. shop keeper, has a potential participant, i.e. customer base, of all consignment node participants. In other words, a potentially huge customer base that incurs the minimal cost of a local consignment node connection may reach any other consignment node through the consignment node network. And local collector's may economically participate in the collectable markets by using local access to a convenient consignment node "trusted" bailee, and electronically presenting collectable goods to an electronic market.

A consignment node in a simple form may have a computer 10, a digital camera 12, a bar code scanner 14, a display 16, a printer 20, a keyboard 18, a database 22 and a network connection 26 collectively called hereinafter a consignment node. The present invention also has a user interface application program to execute an a user or participant's data terminal 28.

The consignment node may have four modes of operation: a software download mode, an auction mode, a market mode, and an agent mode. The software download mode allows a participant to log into the consignment node and receive a download of a participant interface application program. The auction mode allows a participant, from the participant interface application program, to log into a consignment node to partake in an electronic auction. The market mode allows a participant with the participant interface program to log into a consignment node to browse the consignment node database to search for a used or collectable good. The agent mode allows a participant to log into a consignment node to formulate a search request for a particular used good or collectable. The consignment node may search its own database for the requested good and/or generate agents to search and report back a search request of other consignment nodes.

The present invention may allow a participant to electronically purchase goods from a consignment node and to select whether the good should be shipped to a participant designed location or the participant may take electronic legal ownership of a good and post a new participant defined offer or reserve price. By the interaction of a plurality of participants buying and selling collectibles on a consignment node, posting "buy at" and "sell at" quantities and prices the consignment node may establish a market or become a "market maker" for collectable goods. A participant may also elect to electronically transfer or present a good to a different consignment node or market. This allows a participant to speculate with collectable goods on the consignment node network's different markets and not incur the shipping costs with physically moving the goods, while providing a trusted means to assure potential buyers of the good's bona fide availability and legal title.

The consignment node operator or purveyor, hereinafter referred to as the consignment node user, establishes his consignment node by creating a database of used goods or collectibles, hereinafter the term "goods" shall be used to reflect used goods, new goods and collectibles. The user takes the first good to be put on the database and invokes the consignment node software to create a data record. For example, the user owns a baseball card collector shop and the user wants to post his Babe Ruth collection. The user in this instance invokes the consignment node to "build the database mode" and the invention initializes the digital camera 15. The user then "photographs" or digitizes the image of the particular Babe Ruth card. The consignment system then displays an empty database record on the display to accept text information concerning the card.

The user fills out the display record with information concerning the particular Babe Ruth card. The consignment node verifies that enough information has been filled out in the displayed computer record, as well known to the electronic database arts, and accepts the record. It should be noted that the consignment node database record has data fields for the consignment node user to add value to his consignment node postings with subjective information such as condition of the card, special features such as autographed by Babe Ruth, and the like. Thus, the consignment node user may build business goodwill into his particular consignment node operation by establishing his own particular subjectivity and quality standards in item postings.

After the data record or the particular Babe Ruth card is accepted by the consignment node the system may print out a bar code label on the printer 20. The user may then put the particular Babe Ruth card into a plastic bag and affix the bar code label to the bag. The bar code labeling system becomes a useful inventory management tool discussed below.

It is understood in this first example that the consignment node user is the legal and equitable owner of the Babe Ruth card and that the user posted a reserve or offer price on the particular card at his posting. In a second illustrative example, a local resident would like to post, for example, his Frank Robinson baseball card. The resident brings his Frank Robinson card to the baseball card store and tells the consignment node user he would like to offer his Frank Robinson card for a consignment sale. Again, the consignment node user invokes the system database posting mode and "photographs" the Frank Robinson card with digital camera 12. As above, the user fills in the system generated display prompt for information concerning the Frank Robinson card. The resident informs the user of the reserve or offer price and signs or agrees to a consignment contract with the consignment node user to accept the consignment terms to pay the consignment node user on the sale of the card, for example 6%, of sales price as a consignment fee. Again, the system may print the appropriate bar code for the Frank Robinson card. The consignment node user then takes possession of the card and may affix the bar code label to an appropriate cardholder. It should be noted by the consignment node user may again "add value" to his consignment node by entering subjective criteria in the database entry for authenticity, condition, special attributes and the like. The participant or local resident may now electronically present his Frank Robinson card to any consignment node, consignment node auction or consignment node market maker in the consignment node network.

These processes may be repeated again and again to establish a substantial database of goods for sale. It should be noted that the consignment node user may at his discretion take postings from reputable dealers or collectors via a facsimile machine or other forms of electronic or verbal presentation of a good for sale. It is within the sound discretion of an individual consignment node user to establish these practices. It is within the scope of the invention, however, to take electronic postings from other consignment node users or individuals over the network, as discussed below. Each consignment node user may be a franchisee of a central franchiser and the franchiser may police the network to give quality control, detect fraud and revoke the franchises or licenses of poor quality consignment node users. Thus, the consignment node is a "trusted" network for consignment node users providing value to the network by imposing a quality and performance structure on the consignment nodes. The same franchise enforcement scheme is also available to the low cost posting terminal embodiment to the present invention.



## The Sale

A buyer, hereinafter participant, may electronically log onto a consignment node via a network connection by use of a PC with participant interface software, through an interactive television application, workstation, internet browser or the like. The network connection drivers for the consignment node are discussed in detail below. The participant may enter the browse node and peruse the consignment node database of goods. It is understood that the participant may receive the image taken with a digital camera 12 of the goods at the participant terminal. The participant, upon finding for example the above-posted Frank Robinson card may decide to purchase the card. The participant may present electronic payment to the consignment node by entering a credit card number and expiration date or other forms of electronic payment. It is understood that a secure and/or encrypted means may be established between a participant's interface application and a consignment node to transfer sensitive or theft prone information. Moreover, a participant may establish an account with his local consignment node to be debited and credited with the funds used and generated with his transactions.

The consignment node may, for example, clear the transaction by charging the participant's charge card account and crediting the consignment node store account by well-known credit card clearing techniques. After the consignment node has cleared the transaction the system electronically transfers ownership of the Frank Robinson card to the participant. The participant may then be presented with the choice of directing the delivery of the Frank Robinson card to a desired location or may choose to post a new reserve or offer price for the card and direct the card to remain in the possession of the consignment node user. Thus, the consignment node allows a participant to speculate on the price of the Frank Robinson card and establishes an electronic market for the Frank Robinson card. It is understood that the consignment node may have many Frank Robinson cards available, thus by the interaction of collectors electronically buying and selling the collectibles it will establish a market price for a Frank Robinson card or any other good. For each transaction, the consignment node user extracts the small consignment fee, e.g., 6% of the sales price, thus the consignment node user directly benefits from operating a reputable consignment node. If the participant elects to take delivery of the purchased goods then the consignment node may track the delivery and ownership of this good to this particular participant in a data record. This data record may be useful to speed the posting of the good, should the participant later decide to re-post and sell the good, and it also creates a valuable database of records to track the possession and ownership of a collectable. This feature may be useful in the agent mode, e.g., tracking down very hard to find items, discussed more fully below.

## The Auction

For a rare good, a good in a volatile market, or a good's initial posting the consignment node user or participant may wish to auction the good, with or without reserve, to the highest bidder. In this mode, the good may be posted on the consignment node by the means described above but the data record representing the good is identified as waiting for an auction date and may not be purchased on the electronic market. Alternatively, an item may be in the electronic market of the consignment node with a high reserve price that may be lowered in the auction or liquidation mode. Here the consignment node user or the good's participant owner

may enter a protected data field a confidential reserve price for the auction mode. The consignment node user arranges by invoking the appropriate consignment node program a time and date for an electronic auction. The consignment node user or good's participant owner may establish, in a data record that represents the good, a desire for the item to be auctioned. For example, a pawnshop operator of a consignment node may have several Rolex watches he wishes to auction with reserve this Saturday night at 7:00 p.m. The consignment node user, here a pawnshop, identifies on the Rolex watch records the auction date and the confidential reserve price. The consignment node system may "advertise" auction dates, items and auction terms in the consignment node log on welcome message discussed below. Moreover, a good that is identified as awaiting an auction date may be viewed before auction in the consignment node browse mode by a perspective auction participant.

At the auction date, perspective participants log onto the consignment node auction mode locally or through the consignment node network and await the first good to be auctioned. It is understood that in the best mode of the invention the participant will have a data terminal with a digital to analog converter such as a "sound blaster" and speaker, the digital to analog capability may be used in the auction mode to bring the aural excitement of an auction, e.g., the call of the heckler, the caller and bidders, home to the auction participant. This is discussed in more detail below.

The consignment node takes the first item to be auctioned and posts the image of the good and the good's text record to the participants. The consignment node then posts the opening bid. It is understood that the bid postings may be in a protocol that invokes the generation of an auctioneer's voice at the participant terminals. The participants may then respond with a higher bid. The consignment node mode scans electronically the participants for bids and accepts the highest bid. If bids are tied the consignment node may take the first highest bid by the participants log on order. A particular bidding participant receives a special acknowledgment from the consignment node that her bid was accepted. The consignment node then posts the higher bid to all the electronic auction participants. The consignment node repeats this process until no higher bid is received for a predetermined amount of time and closes the auctioning of that particular good. The consignment node then checks whether the highest bid received is greater than the reserve price, if appropriate. The consignment node may then post sold! and the sell price to all participant terminals and proceed to post the next item for auction. Again a successful purchaser may elect to direct delivery of the good or post the good on the electronic market at a new participant determined offer price.

It is understood that the terms of the auction sale are posted and agreed to by the participants before allowing a participant to bid on goods in compliance with local requirements and statutes. It is also understood that a participant may make electronic payment for the goods or establish a line of credit or collect on delivery terms within a particular consignment node user's discretion. This may be established by a relationship between a local consignment node user and a local participant at the local consignment user's discretion.

It should be noted that a consignment node user may sell virtual advertising space or a central master node e.g., the franchiser, may coordinate the sale of advertising space on a pool of consignment nodes to reach target market participants. For example, if a participant has purchased or specu-

lated in antique pens, and advertisers of an antique pen specially consignment node wishes to target market individuals on the network who have purchased collectable pens in the past. A central coordinated master node may sell advertising to an advertiser for the log on message or e-mail targeted participants and users. Thus, the network of consignment nodes can establish a market for target marketing or blanket advertising of goods and services sold locally or on a network level by a central node.

#### The Agent

The Agent Mode allows a consignment node participant to search a plurality of consignment nodes and purchase records for a used good. A participant may log onto his local consignment node to shop. This participant, for example, may be interested in purchasing a particular used coin for her collection. The participant may invoke a consignment node Agent to search the network of consignment nodes for this coin. The participant fills in the search parameters for this coin, for example, a 1872 U.S. penny from the Denver Mint. The consignment node Agent task handler verifies the Agent form is sufficiently filled out and accepts the task. The Agent checks a list of other consignment nodes network addresses kept by the local consignment node database and generates an Agent communication message to each consignment node on the list and begins to establish communications to the other consignment nodes. An Agent message between consignment nodes begins by coordinating or reconciling the database on each consignment node of the locations and/or address of other consignment nodes. If a consignment node has a different list of consignment nodes in its database it will pass the node update information to the other consignment node. The consignment node originating the Agent task will generate a new Agent task to accommodate the information concerning the new consignment node. Once the consignment node database of consignment nodes is reconciled, the Agent will search the consignment node database for the goods requested. The Agent will report back whether the search of the local market database was successful and how many good that matches the Agent search request it found. An Agent may also search the consignment node database of past transactions to identify an owner of a particular good. The Agent may then report that John Doe of Main Street, U.S.A. was the last known purchaser of a 1872 U.S. penny from the Denver Mint at this node. It is understood that differing levels of privacy are available to consignment node purchasers, so as only allowing the local consignment node user to view past purchaser information and/or provide the Agent with an option of contacting that consignment user so he may contact the prior purchaser, thus, protecting privacy while allowing bona fide offers to reach the prior purchaser in confidence.

Once some of the Agents start reporting back to the Agent originating consignment node, the originating consignment node may report the results to the consignment node participant of the Agents' results. Such results may give the total number of matching items found thus providing the local participant/collector an indication of the depth of this market. It is understood that a local consignment node user may charge participants for Agent requests.

#### Computer Implementation

In the preferred embodiment of the present invention a consignment node may use a multitasking operating system such as UNIX, OS/2, NT or VMS. However, a Microsoft DOS or Windows implementation is within the scope of the

present invention. The consignment node may be networked via TCP/IP and the internet or a private TCP/IP network or X.25 private or public network or service providers network of ISDN, ATM and the like. It is understood, that a consignment node may support a plurality of protocols simultaneously. Moreover, it is understood that the participant interface application program may execute on a wide variety of platforms such as PC's, MAC's, Power PC's, workstations, cable set-top boxes, video game hardware and the like and are within the scope of the present invention. The posting terminal embodiment is discussed in detail below.

#### BRIEF DESCRIPTION OF THE DRAWINGS

FIG. 1 shows the consignment node of the present invention may have a computer 10, a data storage device 22, a tape drive 24, a digital camera 12, a bar code scanner 14, a display 16, a keyboard 18, a laser printer 20, and a network connection 26. A participant user terminal is shown at 28.

FIG. 2 shows a schematic block diagram showing the logic flow of a user log in at a consignment node.

FIG. 3 is a schematic diagram showing the logical flow of the consignment node auction process.

FIG. 4 is a schematic diagram showing the logical flow of the consignment node market or browse mode.

FIG. 5 is a schematic block diagram showing the logical flow for posting a new used good on the consignment node.

FIG. 6 is a schematic diagram of a subroutine that may be used to post auction bids.

FIG. 7 is a schematic diagram of a subroutine that may be used by the consignment node auction process to receive participant auction bids.

FIG. 8 is a schematic diagram showing the logical flow for a subroutine that may be used to transfer ownership of an item.

FIG. 9 is a schematic diagram showing the logical flow for a consignment node in-store sale of a good.

FIG. 10 is a schematic diagram showing the logical flow of post-processing and analyzing consignment node sales.

FIG. 11 is a schematic diagram showing the logical flow of the consignment node Agent handler subroutine.

FIG. 12 is a block diagram of the posting terminal to market maker computer connections.

FIG. 13 is a diagram showing a user interface on a posting terminal or consignment node.

#### DETAILED DESCRIPTION OF THE PREFERRED EMBODIMENTS

It is understood that the get session identification procedure 100 is a routine that monitors the communication ports and virtual communication ports residing on protocol stack. The consignment node may use, for example, a X.25 interface card, available from Eicon Corporation or Frontier Corporation to execute an X.25 protocol stack in a PC workstation. The get session identification 100 program may monitor the X.25 protocol for incoming calls. If the program identifies an incoming call it may answer the call by transmitting the appropriate X.25 packet to the network on the appropriate virtual channel. It is understood that other protocols, such as TCP/IP, DECNET, SNA and ATM are within the scope of the present invention and that multiple protocol stacks may simultaneously execute in a consignment node. Therefore, the get session identification program 100 may have multiple instances to connect and monitor the

various protocols. After the get session identification 100 has appropriately answered an incoming call to the consignment node, it may invoke the display welcome message and menu routine 102.

It is understood that the get session identification 100 provides sufficient information to the display welcome message and menu 102 to allow the display welcome message and menu 102 to connect to the appropriate session or virtual channel. At this juncture, if the participant is using an approved interface program, the interface program will send a predetermined code to indicate its version and other characteristics of its display driver. If a participant is logging in from a TTY terminal or other terminal the display welcome message and menu 102 may detect this information and send the appropriate TTY welcome message. This procedure may also be used to identify features and languages supported on various internet world wide web browsers. It is understood that the welcome message is viewed by the consignment node user as virtual advertising space that may be sold by the consignment node user or coordinated with the master control node (discussed in detail below). The participant may respond to the display welcome message and menu 102 program by giving an appropriate log on response 104. The get log on response 104 may verify and grant a level of access privileges to the participant. It is understood that the consignment node user may require the get log in response 104 to retrieve a credit card number, pin number, user ID and the like, to grant access privileges. If a participant is using a TTY terminal those sessions may be shunted to the download interface program (DIP) 106 routine to receive an appropriate interface program from the consignment node. The DIP 106 may present a list of choices as to what version interface program should be downloaded, such as DOS, Windows, UNIXMAC platforms and what transfer program is desired such as Kermit, Xmodem, FTP and the like. A participant with a participant interface program may also elect to receive a new interface program from the DIP 106. It is understood that an older, no longer supported interface program participant may be shunted to the DIP 106 to receive a new interface program.

A participant with a supported interface program may select the auction 108, market 110 or agent handler 112 sections of the consignment node. If a participant selects auction 108 the participant may be presented with a menu of auction selections such as auctions in session, future auction times, dates, locations and topics, and auction preview. If a participant selects auctions in session the participants' session is passed to the appropriate auction handler, as discussed below. If a participant selects future auctions the participant will be given a list of future auction times, dates, terms, locations and topics of auctions on this and other consignment nodes. It is understood that these displays represent a virtual advertising opportunity for the consignment node user and the advertising space may be sold by the consignment node user or by the master control node. If the participant selects the auction preview, the auction process 108 passes the participant session to the market session 110 with data that indicates an auction preview desired by the user.

If the participant selects the market 110 choice the participant is given a menu of markets that the participants may browse, discussed further below. If the participant selects the agent handler 112 the participant may be provided with an electronic form to create a search for a good. The participant may then execute this Agent's search request to search the network of consignment nodes databases to look for the desired goods. The Agent is discussed more fully below. The

Agent Handler 112 also receives incoming calls from other agents to process the external agents search request on the consignment node. The participant interface and consignment node participant functions are discussed in detail below. It is understood that the agent may also function between virtual markets on a market maker computer and with the transaction archive database discussed below. The discussion now turns to the operation of the consignment node by the user.

FIG. 3 shows a logical flow diagram of the steps the consignment node may use to create a database record of a good for sale or for auction.

The consignment node user may invoke the consignment node program to enter the posting 200 mode to create a data record for the good. The posting 200 mode initializes 204 the consignment node to receive information on a new good. The initialization 204 step displays a data record with data fields on the consignment node terminal for the user to fill in information on the good. The initialization step 204 also initializes the consignment node peripheral devices such as the digital camera 12 and the printer 20. The consignment node user then "photographs" or digitizes the image of the good from one or more perspectives as well known to the digital camera arts. The consignment node receives the digitized image(s) at receive image 206 step. The consignment node program then prompts the consignment node user for information on the good 208. The consignment node receives information 210 that the consignment node user inputs to the data record displayed at step 208. The consignment node program verifies 212 that the necessary information, such as owners name, reserve price, market or auction designation is in the data record. The verify step 212 will reject the record and return the consignment node user data entry mode 210 if the record does not have the minimum information. If the record is verified 212 as complete enough to commit to the consignment node database, a data record is created 214 and linked into the consignment node database. The consignment node program then generates and prints a bar code 216 that indicated the data record. The bar code system is used by the consignment node to maintain an accurate inventory and is a hook for local sales (discussed below). The posting routine may then exit 218 and return from the posting program. By repeating the posting routine of FIG. 3 the consignment node user may build a database of goods for the consignment node market, auction and/or agent searches.

FIG. 4 shows the logical block flow diagram of the processes the consignment node may take to execute an auction. It is understood that the consignment node user may manually invoke the auction process, or may schedule the consignment node to execute the auction process. The auction process begins by initializing 250 the data structures, records, queues and the like to conduct the auction process. The connection between the auction process and auction participants is discussed below. The auction process gets the first item to be auctioned 252 from the database of goods to be auctioned 254. The consignment node then calculates the opening bid 256 by a predetermined formula such as 50% of the reserve or general solicitation of an opening bid is posted to the auction participants 258. The consignment node auction mode then scans the participants for a higher bids 262. If a higher bid is found the new bid is posted 264. It is understood that the steps of checking for bids 260 determines if the bid is higher 262 and posting the new higher bid 264 is repeated until no higher bids are received. After the typical auction closing of going once . . . twice . . . three times the auction is closed 266. The

11

consignment node auction program then compares the highest bid received with the good's reserve price 268 to determine whether to transact the sale. If the highest bid is greater than the reserve price the consignment node auction process posts sold! for xxx amount to the auction participants and calls the transfer ownership subroutine 270, discussed further below, and transfers the ownership of the good. If the highest bid is less than the reserve price the consignment node auction process announces no sale! 272 to the auction participants. The auction process then proceeds 274 to get the next good to be auctioned 278. The consignment node auction process is then repeated until all the goods to be auctioned have been run through 278. The consignment node auction may then close and terminate the participant sessions 280. It is understood that the transfer ownership 270 sub-routine may require time to clear the transaction and, therefore, may be best implement as a spawned child process to the auction process. This will keep the consignment node auction executing at an exciting and fast pace for the participants. The consignment node auction process itself may execute in several instances to provide simultaneous auctions on a consignment node. Thus a consignment node may conduct several simultaneous auctions on several virtual runways. It is understood that in the auction mode the consignment node and the participant interface software may communicate using a protocol that allows the consignment node auction driver to "point to" locations stored in the participant interface software, to cause the participant interface software to generate the sound of a auctioneers voice on the sound blaster, or equivalent board. Thus, the present invention uses pre-stored sound samples of different auction prices and auctioneer "string" along aural calls inside the participant interface software, and allows the generation of said pre-stored sound bites to be invoked by the consignment node driver through the said special protocol. This method greatly reduces the bandwidth necessary for a consignment node to support the generation of exciting auctioneers calls at a plurality of participant terminals. It is understood that the generation of an audio bit stream from the consignment node to the participant terminals is also with the scope of the present invention.

FIG. 5 shows the logical flow for the post bid subroutine 300. The post bid sub-routine may be invoked from several consignment node processes, those specifically described thus far are the post opening bid 258 and posting bid 264 logical processes. The post bid 300 sub-routine is used to communicate between a consignment node and multiple participants. The post bid 300 sub-routine gets participant session identifications 302 from a data record or data structure that contains a list of session identifications of participants who have logged onto the auction sessions. The next step sends the bid passed to the post bid 300 subroutine to each participant session identified in the data structure 306. Bids are posted to each participant through an appropriate driver 308. The driver may be identified for each particular user session. For example, a PC user logged into the consignment node via an X.25 virtual channel may require a host PAD driver in the consignment node to communicate asynchronously to the PC terminal interface application. A network user may require a TCP/IP driver to connect between the consignment node and the participant networked terminal. After communicating the bid to participants through the appropriate device driver 308, the post bid sub-routine may exit and return 310 to the calling routine.

FIG. 6 shows the consignment node subroutine to check participant sessions for bids during the auction mode. Check

12

for bids 350 maybe a subroutine called by the auction program to scan for bids. It is understood that when a participant logs into the consignment node and selects the auction mode, (see FIG. 2), the participant's session identification is passed to a data structure. The data structure maybe used by the check for bids 350 sub-routine to correctly identify participants at a particular virtual auction. As noted above, the consignment node may support multiple simultaneous auctions, therefore, may require multiple instances of the aforesaid data structure. The check for bids sub-routine 350 opens or connects to the appropriate data structure storing or holding participant session identifications who are participating in the check for bids calling auction program instance at the get session identification step 352. The buffers associated with each session is scanned for an input 354. If a participant has input an "exit" command or symbol 356 the routine removes that participant's session identification from the auction identifying data structure and allows the participant to exit 362 the auction. The participant's session identification may be returned to a data structure that allows the participant to return to the consignment nodes main menu, see FIG. 2, or terminate the participant session. The subroutine then compares the bids and takes the highest bid 358. If bids are tied for the highest bid the sub-routine may use the first received bid and reject the others 358. The sub-routine then notifies the participant session who had the highest bid 360. It is understood that the take the highest bid step 358 and notify bidder step 360 are aware of the current bid price for a good and will not allow a lower bid to be accepted. It is understood that the participant session buffers are flushed after they are scanned to remove old or latent bids. The check for bids sub-routine then returns to its calling routine.

FIG. 7 shows the transfer ownership routine 400 that may be used to transfer the ownership of goods and collectibles in the consignment node. The transfer ownership sub-routine may be called from several consignment node modes and processes to effect the transfer of legal ownership. The first step in the transfer ownership sub-routine 400 may be to verify a participant purchaser information 402. It is understood that the consignment node may use a variety of well known authenticating procedures to verify a participant, such verification techniques include personal identification numbers (PINS), passwords, call back, and a plethora of encryption techniques and personal information identification means to provide a reliable verification technique. It is understood that a consignment node user may have established a credit or deposit account for the participant from past sales or the transfer of funds and the verify step 402 may connect the participant to the account. The clear charge 404 step is used to clear the participant consignment node transaction. It is understood that this may be via an external credit card clearing network, a connection to a credit account, or though one of the many proposed electronic fund transfer schemes such as debit cards, e-money, and clearinghouses. After the transaction clears the charge 404, the consignment node credits the consignment node users commission account 406 to extract the consignment node transaction fee. The consignment node then transfers legal ownership 408 of the good by changing the ownership entry in the data record in the consignment node of the good. The consignment node may then print a record of the transaction 410. It is understood that step 410 may also be used to keep a log on the consignment node storage or tape drive. The consignment node then removes the good from sale or auction status 412. It is understood that the data record representing the good is "locked" during the transfer

13

ownership sub-routine to prevent collisions of actions and transfers of the good. If the participant has elected to ship goods then the consignment node will print a shipping label 404 for the consignment node user to attach to the good for shipment. The transfer ownership routine may then exit 416. If the participant has elected to re-post the good or collectable the participant may specify a new reserve or offer price for the good or collectable. It is understood that the purchasing participant may elect to leave the good or collectable at the consignment node and post a new offer or reserve price and may identify that the good is on the market, e.g. may be bought and sold at any time, or that the good is awaiting an auction date. Moreover, the participant may elect to have the good viewable on the market or "invisible" to the market while awaiting an auction date 422. It is understood that the participant may elect to leave the good at the purchased consignment node and electronically transfer the offering of a good to another consignment node. It is understood that consignment node users may run a "trusted" network between consignment nodes to provide the trust between merchants, that the goods exists and that the network between the consignment nodes to provide for electronic presentment of a good is a secure network connection. This allows collectable goods to be concentrated for a single electronic auction or virtual collectable market on a market maker consignment node without incurring the costs of shipping the goods to a central location to bring the good to the market maker consignment node. It is understood that the trusted posting of goods on a market maker node is a value added feature a small town consignment node user can provide to his immediate collector community. It is understood that the master central node may also serve as a legal consignment node franchising authority to provide enforcement of integrity, security and quality control for the consignment node network.

FIG. 8 shows the consignment node routine that may be used to establish a virtual market. The market 450 may be selected from the consignment node main menu, see FIG. 2, to allow a participant to browse the consignment node goods database. The market 450 will display to the participant market categories 452, categories may be defined by the consignment node user to reflect the specialization of his consignment node and the specialized markets or miscellaneous markets for his goods. The consignment node then gets the participants response 454 to the market choices. The consignment node may then display market sub-categories 456. Again, the consignment node user may specify market sub-categories to reflect the specialization of the consignment node. The consignment node may then display items 458 and get the participant or market user response 460 to the displayed choices. It is understood that the participant may browse or scroll through the goods on the market 462, 458, 460 until the participant responds with a desire to exit the market 463. If the response is a desire to transfer to the market root directory 464 then the consignment node will return the participant to the market subcategories 456. If the participant responded with a desire to terminate the session 466 the consignment node will exit the market and terminate the participant's session. It is understood that during the browse loop 458, 460, 462 a participant may elect to buy or make an offer on a good and may invoke the transfer ownership routine, see FIG. 7, to effect the transfer of a good's ownership. It is also understood that a participant may make an offer on a good below the asking (or offered) price. Such a proposed offer may be stored by the consignment node and used to notify the good owner. The good owner may then accept the counter offer or reject. It is

14

understood that a participant counter-offer may be made subject to an acceptance before date. It is also understood that a participant may establish a "buy at" or "sell at" price/quantity for any good in the market.

FIG. 9 shows a logical flow diagram of the process that may be use to transact the transfer of ownership of goods on a consignment node at the store where a consignment node may be located. The consignment node user invokes the store sale sub-routine 500 from a consignment node user terminal, see FIG. 1. The consignment node user may use the bar code scanner to scan the bar code of the good for sale 502. It is understood that the consignment node user may manually recall or search the consignment node database for the data record of the good or may let the consignment node software use the bar code to automatically retrieve the record 504. The data record is then scanned to retrieve price and sale information on the good 506. It is important to note that a good, while on display at a consignment node user's shop may have transferred ownership and changed price via network participants. The consignment node then displays this information 508 at the consignment node user terminal. The store customer may then elect to purchase the good. The consignment node may process a store customer purchase request by calling the appropriate sub-routine to transfer ownership, see FIG. 7, of the good.

FIG. 10 shows a logical process diagram for the central node to collect and process data concerning transactions on a plurality of consignment nodes and provide value added feed back to consignment node users on market positions and trends. Data processing 550 may be executed on a consignment node or the central node to extract transaction data from a consignment node. It is understood that the tape drive, or storage device may be used to log network transactions on the posting, auctioning, buying and selling of goods and collectibles on a consignment node. This information may be collected by the central node over the consignment node network. The central node may then plot sales, sale date, price over time and the like to create graphs of market performance 554. It is understood that the data correlation and processing steps 554, 556 may be customized to provide a particular consignment node user with useful market information. The central node may also provide hard copies or electronically transfer the information to the consignment node users. It is understood that this may be a value added feature of a service that may be provided by a franchiser. It is understood that the central node may log into a consignment node, with well known remote processing and data transfer techniques such as the logon and FTP UNIX utilities to make changes to the aforesaid virtual advertising space on a consignment node.

FIG. 11 shows the agent handler the consignment node may use to establish agent-to-agent and consignment node-to-consignment node connections to process participant agent requests. The agent handler 600 may be entered by a predetermined series of codes and verification procedures to verify a request for an agent connection to the consignment node is from a bonafide agent and a bona fide consignment node. Once this is verified the agent handler may establish a session for the requesting agent 602. The requesting agent may then transfer its agents request to the consignment node 604 and the consignment node may then check its local database 606 to try to match the agents search request. The agent handler may then respond to the agents request 608 and terminate the agent session 610.

A second embodiment to the present invention, shown in FIG. 12, uses a low cost portable "posting" terminal to allow the virtual presentment of goods to market. The posting

15

terminal has a digital camera, a bar code printer, a bar code scanner, a modem and posting terminal software. The posting terminal works in conjunction with a market maker computer. The market maker computer has a database of goods for sale, a posting/de-posting communication handler, a database to world wide web (www) mapping module, a www server, a transaction process, a posting terminal communication manager, a sold database, a shipping database and an account database and has much of the functionality of the previously described consignment node.

The posting terminal and market maker computer functional block diagram is shown in FIG. 12. The posting terminal has a camera interface 701, and image processing module 702, a record maker module 704, a storage unit 710, for storing images and records that have not been posted, a post module 712, a select records module 714, a post request module 716, a print bar code module 718, a get mail module 720, a storage unit for holding posted records and return codes 722, a de-post module 724, a get code module 726, and de-post request module 728, a bar code scanner interface 730, another instance of the get mail module 720, a mail sales routine 738, a print shipping label routine 740, a notify store routine 740, and a check sales module 734. The posting terminal 700 contacts a market maker computer 800 to check sales, to post goods, to de-post goods and to receive mail. The posting terminal 700 is easier to administrate than a consignment node because it behaves like a retail point-of-sale terminal to manage goods that have been posted and are locally sold. The bar code labeling and scanning routines and methods make it easy for the posting terminal user to maintain an accurate account of what goods have been posted, de-posted, sold and/or shipped. The posting terminal may use an MS-DOS or MS-WINDOWS operating system that is much easier for a small store owner to operate and administer than a complex multi-user system like UNIX or WINDOWS NT.

The posting terminal 700 functionality begins with a user taking a digital picture with the posting terminal digital camera and connecting the digital camera to the camera interface module 701. The user selects an icon on a graphical user interface generated by the posting terminal software to pull the digital pictures from the digital camera. It is understood that other input devices such as scanners and the like may be use in place of the digital camera. The image process module 702 may convert the digital picture to a compressed data format such, as JPEG or MPEG, more suitable for communication of the image across a data link. It is understood that the image may keep it's full resolution for posting. The posting terminal then invokes the record maker routine 704. The record maker routine 704 may display the image or allow the user to select an image from storage unit 710. The record maker may display on a posting terminal display a data entry record with pre-defined text fields, number fields, "buttons," knobs and other graphical user interface objects to allow a user to enter data to complete a posting record.

FIG. 13 shows an example of a graphical user interface that may be presented to a posting terminal 700 user. The graphical user interface for the posting terminal 700 may include an image of the item represented by the record 920, a description of the item 922, and 924, the "push button" commands to receive pictures from the digital camera 926, to post a record 928, to clear a local sale 930, to de-post a record 932, to access files of records 934, to view and/or receive and send mail 938, a database category field 940 with a pull down selection bar 942, a database subcategory 944 with a pull down selection bar 946, a code field 948, a

16

posting date field 950, a store identification 951, a market designator field 954, a description field 956, a reserve or wholesale price field 958, and identifier 960, a retail or full price field 962 and identifier 964. The category 940 and sub-category 944 data fields are restricted to selections that can be made by the respective pull down bars 942 and 946. This aids the posting terminal operator in selecting the correct market for the good when creating a record and assures that all records can properly link into a market computer 900 market database. A file may be stored at posting terminal 700 that corresponds to database structure at the market maker computer 800. Having the database structure in a file at posting terminal 700 may allow the posting terminal to receive updates by remote file transfer techniques, such as the KERMIT, FTP, xmodem and ymodem protocols. It is understood that certain selections from the market category 940 and subcategory fields may be "greyed" or that is blocked from selection by a posting terminal 700 user to enforce a franchise and/or license grant that only allows posting in a certain field. This may allow a franchising scheme that restricts a franchisee to a field of use and/or category of goods. The code field 948 displays the bar code data in text form that the market maker computer 900 sends to the posting terminal 700 when a record is successfully posted. Therefore, the code field 948 can serve as a quick visual confirmation to the posting terminal user that the displayed record has been posted. The market field 952 may also be a restricted selection field accessible by pull down selection bar 954. Fields selectable by the market field 952 may include auction, onsale, hold and the like to give additional directionality to the record posting. The price 964 and reserve price fields 958 may be used to structure the two-tiered market of dealer-to-dealer and retail markets. The reserve price identifier 960 and reserve price field 958 may be hidden from view to retail participants. A dealer may be provided with special logon identifications and passwords to view the reserve price 958 and reserve price indicator 960. This feature encourages franchisees to use the electronic market for collectable goods dealer participant interface to generate local sales.

The posting terminal 700 user enters descriptions such as the name of the item, the sale price of the item, and a brief description of the item and the like to compose a record. It is understood that a posting terminal user may enter a retail price and a wholesale price. The retail price may then be displayed to participants 900. Other retail participants 902 may receive the wholesale price. It is understood that this two-tiered pricing scheme may be used to network retail store owners to provide additional incentives for the retail participants to use the network to locate goods and generate sales at the retail point of sale. For example, a retailer may charge the retail price for goods to store customers, while obtaining the benefits, e.g. the profit margin of wholesale or discounted pricing for goods. It is understood that the restricted fields are coordinated with the structure of the For-Sale database 814 to guide a posting terminal 700 user in the proper selection of a market category and subcategory of the posting of a good. Categories may include jewelry, rugs and tapestry, tools, quilts, furniture, art deco, books, pens, coins, stamps and costumes and clothing. Subcategories may include painting and drawings, sculpture, vintage clothing, costumes, shoes, bags, hats, wedding gowns, furs, rug types and the like to structure the database. The user may also select from a list box what category and sub-category from restricted fields in which to post a good. Referring back to FIG. 12, the user may store a composed record on the storage device 710. The record maker routine may also

contain a command button 706 to immediately post the record 708. It is understood that the user may designate a time at which the posting terminal 700 may automatically contact the market maker computer 800 and post the selected goods. The post request 716 module may allow a user to select records from storage unit 710 or as in the case where the user selected the immediate post command 708, the post module 712 may accept a record as an input. The ability of the posting terminal 700 to store and select records for posting asynchronously from when a record is created allows a user to compose records when the posting terminal is isolated from communication with a market maker computer 800. The post module 712 may invoke the post request module 716 to post the designated records on the market and make a virtual presentation of a good. Rules and procedures may be imposed on the posting terminal 700 user through licensing and franchise agreements. Such rules may include the requirement that all goods posted must be in the physical and legal possession of the posting terminal franchisee or licensee, that legal possession of a good may be obtained by lawful ownership or through a franchise approved bailment or consignment contract. It is understood that these rules and legal frame work may be imposed to allow the posted record to convey a legal title to a good such that the ownership designated in the record grants lawful ownership to the good designated by the record. The post request module 716 may use a communication package and protocols to transfer the records to the market maker computer 800. Communication libraries are packaged and are commercially available from WCSC 2740 S. Dairy Ashfor, Suite 188, Houston Tex. 77077 and from Marshallsoft Computing, Inc. at P.O. Box 4543 Huntsville, Ala. 35815. The communication protocols such as FTP and KERMIT may be enhanced by using known encryption and authentication techniques to provide an ultra-secure posting interface. The posting record may also include a header that identifies a store identification, user identification, passwords and the like to allow the market maker computer 800 to verify authenticity, approve authorization and track usage of the posting terminal 700 by a particular posting terminal 700 and posting terminal user.

The market maker computer 800 may verify and accept a record and generate and send a unique bar code number for each record. The bar code number may contain a code that identifies a posting terminal 700. The posting terminal accepts the bar code and places the code in the appropriate record. The unique code generated for each successfully posted record may serve as confirmation that a good has been successfully posted. The record may then be stored on storage unit 722 as a confirmed posted record. When the posting terminals' post request module 716 is finished, the posting terminal 700 or the market maker computer 800 may invoke a mail update routine 720 to pass mail from the market maker computer 800 to the posting terminal 700. Mail topics may include sales information 734, network news 736, and notification of upcoming events 738. The de-post module 724 may use the bar code scanner 730 to receive a posted collectible's identification code. The de-post module 724 may call the de-post request routine 728 to establish communications between the posting terminal 700 and the market maker computer 800. The de-post request module 728 sends the item or collectible bar code to the post/de-post handler 802. The post/de-post handler 802 may remove the collectible identified by the bar code from the for-sale database 814, if the de-posting terminal identification has legal title to the identified collectible as indicated in a for-sale record, the market maker computer 800 may send a de-post confirm code to the posting terminal 700.

The posting terminal 700 may process the confirm signal by indicating that the de-posting procedures was performed. If legal title to the posted collectible good does not belong to the de-posting requesting entity, e.g., the de-posting terminal 700 then indicated by the posting terminal identification, the market maker computer 800 may report the collectible good status, e.g., sold!, to the de-post request module 728. This may indicate to the posting terminal user that a bailee relationship now exists between the store and the new legal owner. It is understood that this bailee relationship may be contractually created and enforced through the franchise contract between the posting terminal user and the franchise granting authority. It is also understood that the bailee agreement may be for a predetermined time and/or require the posting terminal user to hold a good for a predetermined time and/or ship the good to a long term storage facility to ease the bailee burden of posting terminal users where a participant elects to hold legal ownership but keep the good available in the electronic market place for the long term. It is understood that a bond and/or insurance requirements may be required for the posting terminal user and/or the long term storage facility to provide assurance to a long term collectible investor that the risk of loss of the collectible good asset is maintained or at least hedged against loss. It is understood that a good may have sold and the new owner has elected to re-sell the good at a higher price. In this instance, the de-posting terminal will be advised that the good has been sold and advised of the new sales price. The posting terminal may then transact the local sale at the new price. After the de-post request module 728 is finished it may invoke or the market maker computer 800 may invoke the get mail routine 720 to send mail between the market maker computer 800 and the posting terminal 700. It is understood that through the procedures of generating a unique code for each posted good, checking a unique code that identifies each posting terminal 700 against the legal owner entry in a posted good on the market maker computer 800 the database of for-sale goods 814 will be extremely reliable and accurate and assure that a locally sold goods that have already been sold on the market maker computer 800 will not be inadvertently sold twice. The procedures, when used in conjunction with the rules and procedures imposed on the posting terminal user through a franchising or licensing legal framework assure that (1) when a record of a good is found on the market maker computer 800 by a participant 900 or another retailer 902, it is in fact for-sale and is in the physical and legal possession of a "trusted" franchise and (2) that when a bona fide purchase price is tendered by a participant 900 or another retailer 902 the legal title to a good as represented by the record will transfer to the buyer with an immediate or nearly immediate finality to the transaction. This frame work of trusted franchisee, high confidence and accurate market database, and the legal finality of transaction, where the legal transaction/"cash" clearing function is performed by the market maker computer, e.g., the participant credit card number or other payment means is only revealed and brokered by the market maker computer 800, is a massive step toward building confidence and trust between a small collectable merchant and participant with electronic transactions. These procedures may be used to give assurances and create trust to participants, who for example would like to buy and art deco collectable from a collectable shop in Russia but is very reluctant to send credit card information to an unknown Russian collectable shop for the obvious concerns of credit card fraud and/or fraud in the bona fides of the collectable good itself. Here, however, the franchising authority polices the franchisees to revoke the franchise if a



fraud and/or misrepresentations of the bona fides of a collectable good is taking place by the posting terminal user and the assurance that credit card numbers are only revealed to the market maker computer 800 and not accessible to the, in this example, the Russian collectable store. This allows the Russian collectable store to receive the business good will of the electronic collectable market place of the present invention to establish immediate trust with prospective electronic customers.

The market maker computer 800 may have mail module 801, a post/de-post handler module 802, a security module 804, database server 806, a database to www map module 808, a www page server 810, a transaction processor 812, a for-sale database 814, a sold database 816, a shipped database 820, and an account database 824. A www to database mapping 808 module is commercially available from Expertelligence, Inc., Santa Barbara, Calif. at (805) 962-2558. Such a mapping module may map a ODBC database such as Microsoft Access to a www page. The market maker computer 800 may serve four primary functions. The first function is the call handler for processing calls from a posting terminals 700. The second function is a database to www mapping function to present participants 900 and other retailers 902 with a means to access the market database. The third function is to provide a means to process transactions from participants by clearing a transaction and transferring legal title to a good. The fourth function is to provide a means for managing the notification of the sale of a good to posting terminals 700.

The market maker computer 800 may use an accounts 824 database to track payments due to posting terminal 700 users. The clear accounts 825 module may print checks due to posting terminal 700 users. It is understood that electronic funds transfer techniques may be used for clearing account balances 825 for posting terminal users. A modem bank 803 may be used to receive posting calls from posting terminals. It is understood that the modem bank may be replaced by a network connection to the internet. At this juncture it is believed that an off-line, that is a modem bank, connection offers the best security for the posting of goods. However, it is understood that a network connection, e.g. through the internet, is within the scope of the present invention.

A security module 804 may be used to provide identification and password security. It is understood that other security and authentication techniques may be used at security module 804. It is understood that database server 806 may be an ODBC server available from many commercial database providers. Much of the market maker computers 800 functionality is disclosed above in the consignment node functionality. The databases may be structured to indicate of for-sale 814 database and sold database 816, and auction database 817 and a shipped database 820. It is understood that records may move between the databases by book entry transaction. The transaction processor 812 may use RSA certificates and/or other well-known techniques to process secured transactions between the market maker computer 800 and participants 702 and 902. It is understood that the transaction processor 812 may interface with external payment systems 826. It is understood that participant accounts may be tracked at the market maker computer 800. Moreover, it is understood that account surpluses may be acquired by participants speculating in collectable goods may be invested in highly liquid and safe assets such as U.S. Treasury bills to provide and interest bearing accounting for positive cash balances. This provides an incentive, or at least a hedge against inflation, for a participant to keep funds within the collectable market place and to use these funds to

speculate in the collectable market. By using funds available at the market maker computer 800 participants can reduce the transaction costs associated with credit cards and other transaction clearing means and optimize the participants' return on price movements in the buying and selling of collectable goods. It is within the scope of the present invention to allow access to the electronic collectable market through stock brokers, banks, and other transaction providers through these providers private transaction networks, e.g., those networks that use dial in telephone lines to home computers and/or dedicated data lines. It is within the scope of the present invention to allow professional investment advisors to operate funds such as investment companies, mutual fund partnerships and the like, that use collectable goods as part of the funds assets. It is understood that the market "history" may be archived and provided to investment advisors and/or posting terminal users and/or participants on a CD-ROM or other mass storage medium to allow off-line analysis of trends in the collectable goods market. This will allow or create a new class of "learned" speculators in this unique, novel and non-obvious electronic market place and network of trusted franchisees in the collectable goods domain. It is also within the scope to the present invention to create the liquidity, volume and availability analysis to allow the creation of a secondary and derivative market for option and futures contracts and other speculative constructs to be created with the underlying assets as collectable goods in the electronic market place of the present invention.

Many variations of the present invention are possible once the present invention is known to those skilled in the arts and are within the spirit and scope of the present invention. Those skilled in the arts will be able to make many variations on the present invention once this invention is known to the arts.

Therefore, I claim:

1. A computer-implemented two-tiered electronic auction system comprising:

- a data repository storing information corresponding to an inventory of one or more available items;
- a first-tier providing a first participant access to the inventory of one or more items in the data repository, the inventory being offered to the first participant under a first pricing scheme; and
- a second-tier providing a second participant, different from the first participant, access to the inventory of one or more items in the data repository, the inventory being offered to the second participant under a second pricing scheme different from the first pricing scheme.

2. The system of claim 1 wherein the first-tier comprises one or both of a business-to-consumer electronic auction and a consumer-to-consumer electronic auction and the second-tier comprises a business-to-business electronic auction.

3. The system of claim 1 wherein the first pricing scheme comprises retail pricing and the second pricing scheme comprises wholesale pricing.

4. The system of claim 1 wherein the second pricing scheme is transparent to the first participant.

5. The system of claim 1 wherein the second pricing scheme is unavailable to the first participant.

6. The system of claim 1 wherein the first pricing scheme is visible to the second participant.

7. The system of claim 1 wherein the inventory of one or more items comprises goods or services or both goods and services.

8. The system of claim 1 further comprising another inventory of items available only the second participant.



9. The system of claim 1 further comprising another inventory of items available only the first participant.

10. The system of claim 1 wherein the first participant comprises a retail buyer and the second participant comprises a dealer.

11. The system of claim 10 wherein the dealer comprises a wholesaler.

12. The system of claim 1 further comprising a plurality of first participants, each of which is offered the inventory of one or more items under the first pricing scheme.

13. The system of claim 1 further comprising a plurality of second participants, each of which is offered the inventory of one or more items under the second pricing scheme.

14. The system of claim 1 wherein the first-tier and the second-tier share the data repository.

15. The system of claim 1 wherein the second participant can add, modify or delete items in the data repository and can specify the first pricing scheme, the second pricing scheme or both.

16. The system of claim 1 wherein the data repository comprises data records, each data record corresponding to an item in the inventory and specifying a first price for the item and a second price for the item.

17. The system of claim 16 wherein the first price comprises a business-to-consumer price and the second price comprises a business-to-business price.

18. The system of claim 1 wherein the second participant has privileges, unavailable to the first participant, that enable the second participant to access the second-tier.

19. The system of claim 1 wherein the second participant comprises a trusted dealer.

20. The system of claim 1 wherein the first-tier and second-tier are implemented on a same computer system.

21. The system of claim 1 wherein the first-tier and second-tier are implemented on separate computer systems interconnected by a network.

22. The system of claim 1 wherein the two-tiered electronic auction system is implemented on a computer system that also hosts an electronic market system.

23. The system of claim 1 further comprising a process that determines whether a participant is granted access to the first-tier or the second-tier.

24. The system of claim 23 wherein the process comprises a login process that grants the participant access to the second-tier if the participant has been pre-approved.

25. The system of claim 24 wherein the login process determines that the participant is pre-approved to access the second-tier if the participant enters a predetermined login ID or password or both.

26. A computer-implemented method of facilitating commercial transactions by providing a two-tiered electronic auction, the method comprising:

maintaining a first-tier electronic auction at a computer system, the first electronic auction comprising items offered to consumer participants under a retail pricing scheme;

maintaining a second-tier electronic auction at the computer system, the second electronic auction comprising items offered to dealer participants under a wholesale pricing scheme; and

linking the first-tier and second-tier electronic auctions through a data repository having data records that represent items concurrently available in both of the first-tier and second-tier electronic auctions.

27. The method of claim 26 wherein linking the first-tier and second-tier electronic auctions comprises maintaining a predetermined fixed rate that determines a price differential between the first-tier and second-tier electronic auctions.

28. The method of claim 26 wherein the predetermined price differential is established by one or more dealer participants in the second-tier electronic auction.

29. The method of claim 26 wherein linking the first-tier and the second-tier electronic auctions comprises maintaining a price differential between the first-tier and the second-tier, the price differential being established on an item-by-item basis by one or more dealer participants in the second-tier electronic auction.

30. The method of claim 26 further comprising facilitating a financial transaction in the first-tier electronic auction between a consumer participant and a dealer participant, the transaction having finality of transaction.

31. The method of claim 26 further comprising facilitating a financial transaction in the second-tier electronic auction between a first dealer participant and another dealer participant, the transaction having finality of transaction.

32. The method of claim 26 further comprising facilitating a transaction in the first electronic auction between a consumer participant and a dealer participant, the transaction transferring a legally cognizable interest from the dealer participant to the consumer participant.

33. The method of claim 26 further comprising facilitating a transaction in the second electronic auction between a first dealer participant and another dealer participant, the transaction transferring a legally cognizable interest from the first dealer participant to the other dealer participant.

34. The method of claim 26 further comprising:

receiving payment information from at least one participant in the first or second electronic auction, the received payment information being associated with a transaction at the first or second electronic auction.

35. A method for facilitating electronic commerce using an electronic auction system having at least a wholesale tier and a retail tier, the method comprising:

presenting for auction an item description stored in a database operationally coupled to the electronic auction system, the presentation of the item including a current retail bid amount;

receiving a wholesale bid from at least one wholesale-tier participant; and

selectively displacing the current retail bid amount if the received wholesale bid increased by a predetermined amount is greater than the current retail bid.

36. The method of claim 35 further comprising presenting the received wholesale bid increased the predetermined amount as a new current retail bid amount.

37. The method of claim 35 wherein the predetermined amount comprises a percentage of the wholesale bid amount.

38. The method of claim 35 wherein the predetermined amount comprises a percentage of the current retail bid amount.

39. The method of claim 35 wherein the predetermined amount comprises a fixed dollar amount.

40. The method of claim 35 wherein the predetermined amount is determined by a participant who offered the item for auction.

41. The method of claim 35 wherein wholesale-tier participants are presented with the current retail bid amount and with a current wholesale bid amount.

42. The method of claim 35 wherein received wholesale bids are transparent to retail-tier participants.

43. The method of claim 35 further comprising authorizing a wholesale-tier participant to access to the electronic auction using a verification process executing on a computer system.

23

44. The method of claim 35 wherein a verification process selectively grants access to the wholesale tier based on login information provided by a participant.

45. A system for facilitating electronic commerce transactions among participants in an electronic auction using a data packet network, the system comprising:

a first data storage location for storing information relating to an item for auction, the stored information indicating at least one of a retail price term for a retail-tier participant and a wholesale price term for a wholesale-tier participant;

a second data storage location for storing a user identification identifying a participant as either a retail-tier participant or a wholesale-tier participant; and

a display process for selectively displaying, depending on the user identification stored in the second data storage location, at least one of the retail price term to retail-tier participants and the wholesale price term to wholesale-tier participants.

46. A two-tiered auction system comprising:

a retail tier in which a bid on an item from a retail auction participant is evaluated based on an amount of the bid received from the retail auction participant;

24

a wholesale tier in which a bid on the item from a wholesale auction participant is evaluated based on an amount of the bid received from the wholesale auction participant increased by a predetermined amount; and

a process for differentiating retail auction participants from wholesale auction participants.

47. A method of conducting two-tiered auctions comprising treating received bids differently depending on whether the participant from whom a bid is received is a retail participant or a wholesale participant.

48. The method of claim 47 in which a bid received from a retail participant is evaluated based on an amount of the received bid.

49. The method of claim 47 in which a bid received from a wholesale participant is evaluated as if the received bid was for a higher amount.

50. The method of claim 47 in which, if a wholesale participant wins an auction, an amount owed by the wholesale participant is less than an amount of the wholesale participant's winning bid.

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